



# Improving Commercial Case Management in the Federation of Bosnia and Herzegovina

Feasibility Study





# Feasibility Study: Improving Commercial Case Management in the Federation of Bosnia and Herzegovina

Delivered by the World Bank in collaboration with the UK Government



## Acknowledgements

The Study was prepared by a World Bank team comprising Ms. Georgia Harley (Justice Reform Specialist), Mr. Srđan Svirčev (Public Sector Specialist), Ms. Marina Matić Bošković (Justice Reform Adviser), Ms. Svetlana Đuković (Human Resources Adviser), Ms. Ana Krnić (Justice Reform Adviser) and Ms. Victoria Esquivel-Korsiak (Consultant). This study would not have been possible without the support of the World Bank office in Sarajevo for organizing missions and providing valuable guidance through the process. The team also benefited from feedback from World Bank peer reviewers, Mr. Igor Matijević (Senior Financial Management Specialist), Mr. Waleed Malik (Senior Public Sector Specialist) and Ms. Ruvejda Aliefendić (Private Sector Specialist).

This Feasibility Study was requested by FBiH authorities, and the team would like to thank stakeholders for their engagement in this study. Particular appreciation goes to officials from the FBiH Prime Minister's Office, Secretary of the Government, High Judicial and Prosecutorial Council, Centre for Judicial and Prosecutorial Training, as well as judges, judicial staff, attorneys and business sector representatives in both FBiH and RS for their time, hospitality, and willingness to discuss issues in a frank and open manner. Several stakeholders provided detailed comments on drafts, and this improved the quality of the Study. The team is also grateful to the international partners for their support and suggestions.

This Study was supported by the UK Government. The views expressed in this publication do not necessarily represent the views of the UK Government.

## Contents

Acknowledgements .....	3
Acronyms and Abbreviations .....	6
Executive Summary .....	8
Courts and the Business Climate in BiH .....	9
Court Performance in Commercial Cases and Factors Undermining Performance.....	10
1.1 Caseloads, Workloads and Resources.....	10
1.2 Efficiency, Timeliness, and Productivity.....	12
1.2.1 Procedural Bottlenecks in Case Processing.....	15
1.3 Quality and Consistency in Decision-making .....	17
1.3.1 Structural Fragmentation and the Use of Case Law Harmonization Tools .....	17
1.3.2 Appeals and Confirmation Rates.....	17
1.3.3 Judicial Independence and Accountability.....	18
1.3.4 Training of Judges, Lawyers, and Court Staff .....	19
1.4 Accessibility of Courts for Businesses .....	21
Analysis of the Most Problematic Case Types .....	22
1.5 Business Registration Cases .....	22
1.6 Small Claims Cases.....	24
1.7 Enforcement Cases .....	26
1.8 Bankruptcy Cases.....	28
Models of Specialization and Lessons from Comparator Jurisdictions.....	31
1.9 Different Models of Specialization .....	32
1.9.1 Specialized Departments in Courts of General Jurisdiction.....	33
1.9.2 Separate Commercial Courts .....	33
1.9.3 Mixed Models .....	34
Options for Improving Commercial Case Processing in FBiH.....	35
1.10 Option 1: Establish Separate First-instance and Second-instance Commercial Courts in each Canton.....	35
1.10.1 Constitutional and Legislative Implications.....	35
1.10.2 Operational and Financial Implications.....	36
1.11 Option 2: Establish Separate First-instance Courts in Selected Cantons and a Second-instance Commercial Court at FBiH level .....	43
1.11.1 Constitutional and Legislative Implications.....	44
1.11.2 Operational and Financial Implications.....	44
1.12 Option 3: Reorganize and Strengthen Existing Commercial Departments without Establishing Separate Structures .....	49

1.12.1	Constitutional and Legislative Implications .....	49
1.12.2	Operational and Financial Implications .....	49
	Conclusions on Feasibility of Improving Commercial Case Processing.....	54
	Recommendations and Next Steps.....	55
1.13	Strengthen Commercial Departments in Municipal Courts in FBiH .....	55
1.14	Fast-Track the Resolution of Small Disputes .....	55
1.15	Incentivize Performance .....	56
1.16	Develop and Deliver a High-Quality Training Program for Commercial Judges.....	56
1.17	Close Procedural Loopholes and Ease Bottlenecks in Case Processing.....	57
	Annex 1: Methodology.....	58
	Annex 2: Partial List of Stakeholders .....	59

## Acronyms and Abbreviations

ADR	Alternative Dispute Resolution
BAM	Bosnia and Herzegovina Convertible Mark
BEEPS	Business Environment and Enterprise Performance Survey
BiH	Bosnia and Herzegovina
CCJE	Consultative Council of European Judges
CEPEJ	European Commission for the Efficiency of Justice
CJPT	Public Institution Centre for Judicial and Prosecutorial Training
ECA	Europe and Central Asia
ECHR	European Convention on Human Rights
EU	European Union
EUR	Euro
FBiH	Federation of Bosnia and Herzegovina
FIC	Foreign Investors Council
GDP	Gross Domestic Product
GRECO	Group of States against corruption
HJPC	High Judicial and Prosecutorial Council
ICR ROSC	Insolvency and Creditor/Debtor Rights Report on the Observance of Standards and Codes
ICT	Information and Communication Technology
IMF	International Monetary Fund
IPA	Instrument for Pre-Accession Assistance
MOJ	Ministry of Justice
MSME	Micro, Small and Medium Enterprises
RS	Republika Srpska
TNA	Training Needs Assessment
USAID	United States Agency for International Development
WB	World Bank



## Executive Summary

**1. A key factor affecting the business climate in BiH is the poor performance of the courts.** The court system appears to impact the business climate in BiH more than almost anywhere else in Europe and Central Asia. For businesses with administrative or judicial cases before the courts, delays and inconsistency in decision-making causes frustration and uncertainty that impacts business operations. For businesses without cases before the courts, fear of the court system deters them from seeking resolution and they negotiate as best they can in the shadow of the law. Micro, small and medium -sized enterprises (MSMEs) suffer the most from poor court performance. Governments at all levels have committed to improving the management of commercial cases as a key reform to improve the business climate.

**2. Against this background, stakeholders in the Federation of Bosnia and Herzegovina (FBiH) requested the World Bank to conduct a feasibility study on how best to improve the processing of commercial cases in the FBiH.** This Feasibility Study analyzes the performance of FBiH courts and presents options for improving their efficiency and quality. The Study is based on the results of more than 60 key informant interviews, analysis of statistical caseload data, finance and human resources data, desk research and a small survey of business representatives (See Annex 1: Methodology). The Study offers in-depth analysis of the problems facing case processing, analyses performance by case type and court type, and compares existing procedures for commercial cases in FBiH and Republika Srpska (RS). The Study draws on international and regional good practices and lessons from countries with different models of commercial specialization. The Study then outlines a series of policy options and analyzes the constitutional, legal, operational and financial implications, associated risks and opportunities of each option.

**3. Based on this analysis, the Bank recommends that FBiH reorganize and strengthen its existing commercial case departments by implementing a package of reforms to improve the efficiency and quality of case processing.** Other options that require restructuring the court system are cost-prohibitive and there is no sound evidence that they would improve efficiency in any meaningful way. Experience and results from comparator countries demonstrate that court performance and quality of services are not as dependent on the court structure as on effective implementation. Improvements in case management within the existing structure (Option 3 in the Study) would be the simplest and most cost-effective option and requires only limited legislative changes. Also, a majority of stakeholders favor this option, which is likely to result in successful implementation. The medium-term cost of this option would also be manageable.

**4. The Study lays out a series of next steps to implement this package of reforms over the next eighteen months or sooner.** This reform could improve the business climate in the short to medium term. In FBiH, all of the next steps proposed in this Study should be implemented. In RS, policymakers may also consider adapting and implementing a subset of these reform measures to strengthen the performance of Commercial Courts in RS, in particular to fast-track small claims, incentivize court performance, strengthen training, close procedural loopholes and ease bottlenecks in case processing.

## Courts and the Business Climate in BiH

**5. According to the Investment Climate Statement 2016, investors are deterred by a number of obstacles including complex legal and regulatory frameworks, corruption, non-transparent business procedures, insufficient protection of property rights and a weak judicial system.**<sup>1</sup> The Investment Climate report cites the poor business climate as the predominant cause for the stagnation of private investment in BiH over the last five years

**6. The court system is more of a problem for businesses in BiH than almost anywhere else in Europe or Central Asia (ECA).** According to the Business Environment and Enterprise Performance Survey (BEEPS) in 2014, 18 percent of firms report that the court system is a moderate, major or severe obstacle to their business operations in BiH – a response that is higher than the average for either the Western Balkans or ECA.<sup>2</sup> The BEEPS survey identifies several dimension of perceived poor court performance in BiH: only 37 percent of firms reported that the court system is fair and impartial; only 13 percent of firms reported that the court system is quick, less than half the average for the Western Balkans and ECA; only 46 percent of firms reported that the courts are able to enforce their decisions; and 8.2 percent of firms reported that corruption in the courts was a major constraint to operations, almost double the ECA averages.<sup>3</sup> These findings are corroborated by other surveys and reports. The World Justice Project 2016 identifies the duration of cases as the most serious issue facing the judiciary in BiH, followed by inefficient enforcement mechanisms.<sup>4</sup> The FIC Business Barometer for BiH also argues that improvements in the rule of law should be the top priority to improve investor confidence.<sup>5</sup> BiH ranked 81 out of 190 economies in the 2017 Doing Business Report, the lowest ranking in the Western Balkans.<sup>6</sup>

**7. All businesses operating in BiH are affected by the court system.** For businesses that have administrative or judicial cases before the courts, long delays and inconsistency in decision-making cause frustration and uncertainty.<sup>7</sup> According to data from the High Judicial and Prosecutorial Council (HJPC), the average time taken to resolve commercial cases is 528 days in Municipal Courts. The time taken to resolve a dispute of small value (under 5,000 BAM) is even longer, at an average of 702 days. This is six times longer than the Council of Europe median of 177 days. Businesses report that such delays hinder business affairs. For those businesses without active cases before the courts, fear of the court system deters them from seeking resolution for what may be valid claims, so they negotiate as best they can in the shadow of the law.

**8. MSMEs are likely to suffer the most from poor court performance.** Their relative power imbalance makes them less able to equitably resolve disputes and uphold their rights

---

<sup>1</sup> See Investment Climate Statement 2016 Executive Summary, <http://www.state.gov/e/eb/rls/othr/ics/investmentclimatestatements/index.htm?year=2016&dclid=254345#wrapper>.

<sup>2</sup> See EBRD-World Bank Business Environment and Enterprise Performance Survey (BEEPS), 2014, <http://data.worldbank.org/data-catalog/BEEPS>

<sup>3</sup> Ibid.

<sup>4</sup> See World Justice Project Rule of Law Index 2016, [http://worldjusticeproject.org/sites/default/files/media/wjp\\_rule\\_of\\_law\\_index\\_2016.pdf](http://worldjusticeproject.org/sites/default/files/media/wjp_rule_of_law_index_2016.pdf)

<sup>5</sup> See Foreign Investors Council Business Barometer Bosnia and Herzegovina, Sarajevo, October 2015; <http://www.fic.ba/uimages/udocs/FIC%20Business%20Barometer.pdf>. The FIC also states that shortcomings in enforcement of court rulings are among the top five things that affect business operations in BiH. The FIC argues that adequate and harmonized legislation with efficient and transparent implementation of the law will attract investments and create new jobs.

<sup>6</sup> See p. 7, <http://www.doingbusiness.org/~media/WBG/DoingBusiness/Documents/Annual-Reports/English/DB17-Report.pdf>.

<sup>7</sup> According to the 2015 Insolvency and Creditor/Debtor Rights Report on the Observance of Standards and Codes (ICR ROSC 2015), businesses report that judicial proceedings as “very slow, too complex and decidedly ineffective.”

either in or out of court. They are less likely to have in-house legal expertise and less likely to be able to afford attorney and expert fees. Where legal disputes affect their operations, they have less capacity to absorb the long wait times for adjudication of disputes. This makes them more vulnerable to vexatious litigation and abusive practices. With less of a buffer, they are more in need of protection by an effective court system.

**9. In recognition of the importance of courts to the business climate in BiH, the *Reform Agenda for BiH 2015-2018* and the *Arrangement with the IMF under the Extended Fund Facility (EFF)* commit all levels of Government in BiH to deepening judicial reforms to create a more competitive economy that will attract private investment and create jobs. The performance of the judiciary is also a key element of the EU accession process and, as a potential candidate country, BiH will be expected to boost justice system performance significantly in coming years to meet EU benchmarks.**

## **Court Performance in Commercial Cases and Factors Undermining Performance**

### **1.1 Caseloads, Workloads and Resources**

**10. Jurisdiction over commercial cases in FBiH resides in ten Municipal Courts, ten Cantonal Courts, and the Supreme Court of FBiH.** Only certain Municipal Courts have jurisdiction over first instance commercial cases within a Canton;<sup>8</sup> commercial departments exist in Municipal Courts in Bihać, Orašje, Tuzla, Zenica, Goražde, Travnik, Mostar, Široki Brijeg, Sarajevo, and Livno. However, all Municipal Courts have jurisdiction over commercial enforcement cases.

**11. Commercial cases comprise a significant share of the total workload of courts in FBiH.** In 2015, commercial cases comprised approximately 12.4 percent – or one-eighth – of all incoming cases in FBiH. Although a relatively small share of the total workload, commercial cases are important for the business climate and the economy, as outlined in Section 1 above. The commercial jurisdiction also handles a large share of contentious and complex cases, and these require a considerable amount of judicial work to resolve.

**12. According to HJPC data, 224 judges and 45 legal associates<sup>9</sup> worked on at least one commercial case in Municipal Courts in July 2016.** This is approximately half of all judges in FBiH. However, only a small percentage of those judges and associates truly specialize in commercial cases – many of them worked on only a handful of commercial cases that year. Specialization is more common in larger Municipal Courts. The HJPC appoints legal associates to work independently on certain types of cases (e.g., enforcement, small claims) in Municipal Courts, and in Cantonal Courts they are appointed as civil servants by the Court President to assist the judges.

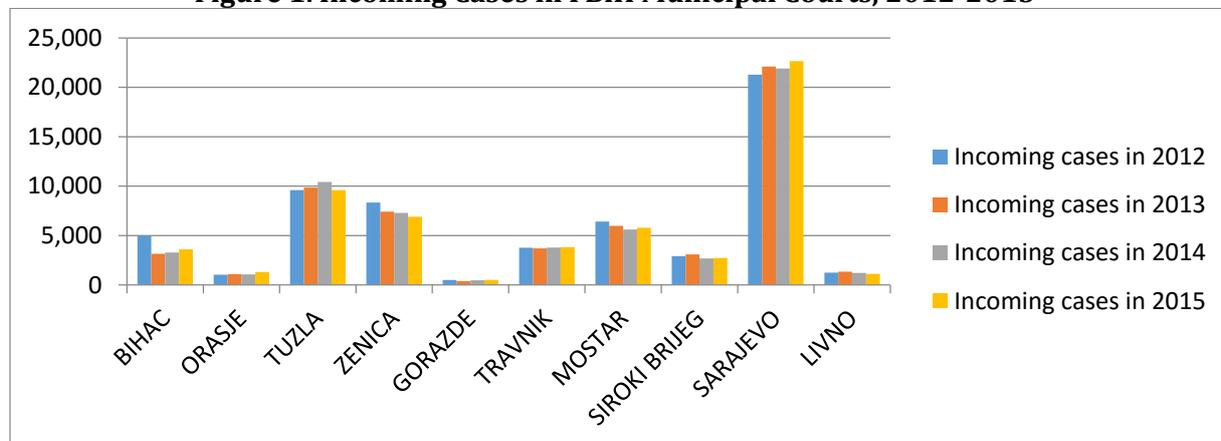
---

<sup>8</sup> In FBiH there are 31 Municipal Courts, 10 Cantonal Courts and the Supreme Court of FBiH. There were 576 judges appointed to these courts in 2015. Article 23 of the FBiH Law on Courts determines which Municipal Courts have jurisdiction in commercial matters for each Canton. Commercial cases are disputes between legal entities or entities that carry out economic activity. Commercial cases relate to the rights and obligations arising from the trade in goods, services, securities, property rights, maritime rights, intellectual property rights, competition violation, bankruptcy and liquidation

<sup>9</sup> The total number consists of 224 judges and 45 legal associates in July 2016 assigned to at least one unresolved commercial case.

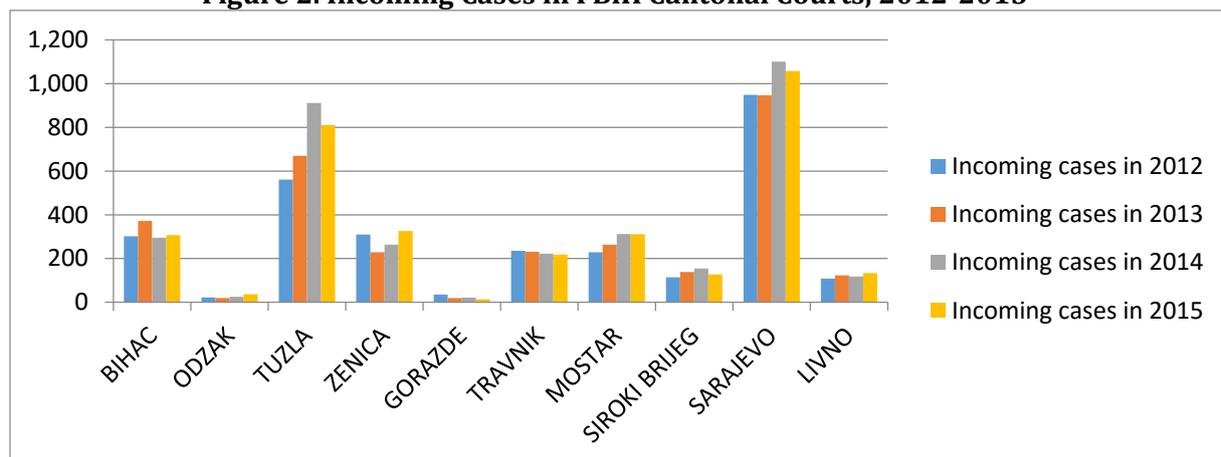
**13. Commercial cases are not equally distributed between Municipal Courts or between the Cantonal Courts.** Caseloads correlate to concentrations of economic activity in FBiH. As shown in Figure 2, the Cantonal Courts in Sarajevo and Tuzla carry the largest caseloads by far, while Cantonal Courts in Odžak and Goražde handle few commercial cases.

**Figure 1. Incoming Cases in FBiH Municipal Courts, 2012-2015**



Source: HJPC Caseload Analysis 2016

**Figure 2. Incoming Cases in FBiH Cantonal Courts, 2012-2015**



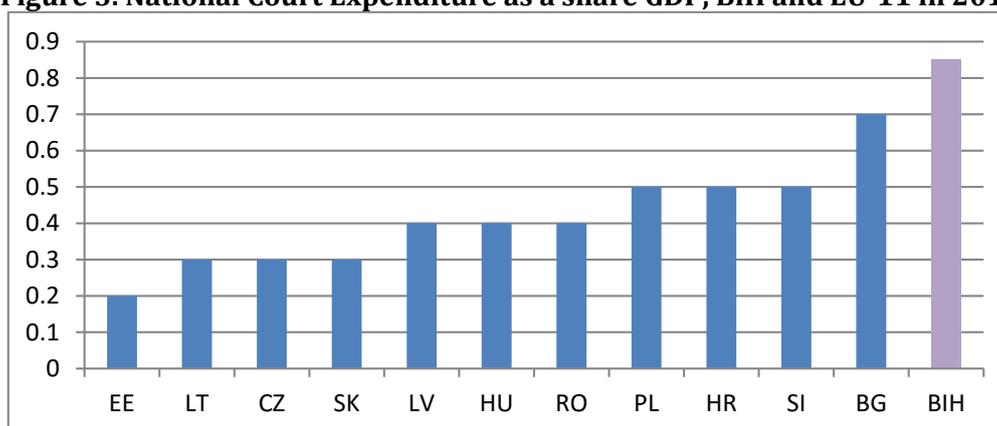
Source: HJPC Caseload Analysis 2016

**14. As of June 2016, the amount at issue in unresolved commercial claims amounted to approximately 4.3 billion BAM.<sup>10</sup>** As of December 31, 2015, there were 63,020 unresolved commercial cases in FBiH. Ninety percent of these (57,565) were pending in the Municipal Courts, 4,996 at Cantonal Courts, and 459 at the Supreme Court.

**15. At a national level, courts are not under-resourced, but resources are not allocated effectively or executed efficiently.** Court expenditure in BiH is approximately 0.85 percent of GDP, which is more than double the averages in the EU (0.3 percent) and four times the average of Council of Europe countries (0.21 percent) according to data from the European Commission for the Efficiency of Justice (CEPEJ). However, budgets are fragmented: courts and prosecutors' offices are financed from 14 different budgets. As a result, courts' resources are unpredictable, uneven and not linked to performance or needs. This problem is more severe in FBiH where capacity for planning remains weak. Data on how much is spent specifically on commercial cases is not available.

<sup>10</sup> Data provided by the HJPC based on CMS data.

**Figure 3. National Court Expenditure as a share GDP, BiH and EU-11 in 2014**



Source: Eurostat

## 1.2 Efficiency, Timeliness, and Productivity

**16. In FBiH, Municipal Courts proved more efficient in resolving commercial cases than higher instance courts.** Between 2012 and 2015 the number of unresolved commercial cases in FBiH decreased by six percent, largely due to resolutions at the Municipal Courts.<sup>11</sup> Municipal Courts in Tuzla and Livno steadily resolved more cases than they received, tackled backlogs and improved timeliness. Other courts' performance varied, with backlogs increasing and decreasing at different times. The Municipal Court in Sarajevo, which carries the largest caseload, struggled with performance: backlogs increased in all years but 2014, causing delays in case processing.<sup>12</sup>

**17. In Municipal Courts, backlogs mostly comprise utility bill enforcement (27,021 of 57,565 backlogged cases), small claims (18,184 cases) and bankruptcy (480 cases).** According to the CEPEJ, the disposition time for utility bills enforcement was 8,897 days in 2012.<sup>13</sup> The clearance rate<sup>14</sup> in that year was only 33 percent. Occasional progress can be seen but the problem remains immense.

**18. Efficiency in Cantonal Courts and the Supreme Court of FBiH decreased from 2012 to 2015, increasing backlogs and prolonging disposition times.** While Cantonal Courts in Bihac and Novi Travnik continually reduced their backlogs and shortened disposition times, other Cantonal Courts (e.g., Sarajevo) generated growing backlogs or had a negligible influx of commercial cases (e.g., Odzak and Goražde). Growing cantonal backlogs were primarily the result of appeals from Municipal Courts in litigation and enforcement cases. The Supreme Court of FBiH also experienced a growing backlog and prolonged disposition times, predominantly due to extraordinary legal remedies cases which comprise the main share of the court's caseload. If

<sup>11</sup> Municipal Courts decreased their stock of unresolved cases by 9 percent. By contrast, Cantonal Courts increased the number of unresolved commercial cases by 53 percent and the Supreme Court of FBiH by 37 percent.

<sup>12</sup> When observing non-utility commercial cases in Municipal Court in Sarajevo, backlog in 2014 and 2015 was reduced. Unfavorable results are primarily attributed to utility cases.

<sup>13</sup> WB calculation based on data provided by HJPC. Disposition time is calculated by comparing the number of resolved cases during a reporting period with the number of unresolved cases at the end of that period. It measures how frequently a court turns over the cases received or how long it takes to resolve a case. CEPEJ Guidelines are available at [http://www.coe.int/t/dghl/cooperation/cepej/textes/Guidelines\\_en.pdf](http://www.coe.int/t/dghl/cooperation/cepej/textes/Guidelines_en.pdf).

<sup>14</sup> WB calculation based on data provided by HJPC. Clearance rate is calculated by dividing the number of resolved cases by the number of incoming cases. It shows the ability of a court(s) to handle the inflow of cases. CEPEJ guidelines are available at [http://www.coe.int/t/dghl/cooperation/cepej/textes/Guidelines\\_en.pdf](http://www.coe.int/t/dghl/cooperation/cepej/textes/Guidelines_en.pdf).

improved performance in Municipal Courts is not mirrored by higher courts, backlogs will simply relocate to a higher court, as seen between Cantonal Courts and the Supreme Court of FBiH.

**19. FBiH courts have significantly reduced the number of unresolved commercial cases older than five years.** This number fell from 8 percent in 2012 to 2 percent in 2015 as a result of disciplined resolution of older cases. Under EU standards, the share of “old pending cases” would be higher than in the HJPC Analysis.<sup>15</sup> Although the number of old cases was reduced significantly, individual older cases should be constantly monitored to ensure persistence of positive trends.

**20. According to HJPC data for 2015, the average duration of resolved commercial cases in Municipal Courts was 528 days.**<sup>16</sup> Six courts had average durations of both resolved and unresolved commercial cases of over 500 days: the Cantonal Court in Sarajevo, Municipal Court in Tuzla, Municipal Court in Mostar, Municipal Court in Sarajevo, and Municipal Court in Livno.

**Table 1. Average Duration of Commercial Cases by Court in FBiH, 2015**

<b>COURT</b>	<b>Average length of disposed cases</b>	<b>Average length of pending cases</b>
FBIH SUPREME COURT	374	384
BIHAC CANTONAL COURT	178	101
ODZAK CANTONAL COURT	11	0
TUZLA CANTONAL COURT	394	417
ZENICA CANTONAL COURT	71	78
GORAZDE CANTONAL COURT	17	0
NOVI TRAVNIK CANTONAL COURT	110	49
MOSTAR CANTONAL COURT	335	254
SIROKI BRIJEG CANTONAL COURT	145	115
SARAJEVO CANTONAL COURT	857	735
LIVNO CANTONAL COURT	316	402
<b>AVERAGE CANTONAL COURTS</b>	<b>397</b>	<b>576</b>
BIHAC MUNICIPAL COURT	397	435
ORASJE MUNICIPAL COURT	308	596
TUZLA MUNICIPAL COURT	651	666
ZENICA MUNICIPAL COURT	387	356
GORAZDE MUNICIPAL COURT	199	268
TRAVNIK MUNICIPAL COURT	403	390
MOSTAR MUNICIPAL COURT	569	894
SIROKI BRIJEG MUNICIPAL COURT	199	199
SARAJEVO MUNICIPAL COURT	623	579
LIVNO MUNICIPAL COURT	538	512
<b>AVERAGE MUNICIPAL COURTS</b>	<b>528</b>	<b>602</b>

Source: HJPC Caseload Analysis 2016

**21. The most problematic commercial case types in FBiH are enforcement, business registration, small claims and bankruptcy cases.** In general, processing these case types is

<sup>15</sup> In applying Article 6, the European Court of Human Rights may consider trials not reasonably timely even if carried out within five years, depending on the case type, circumstances and complexity of the case and the conduct of the applicant and the relevant authority.

<sup>16</sup> The average duration of unresolved cases is 602 days.

especially lengthy, causing frustration among courts and parties alike. There are idiosyncratic reasons why these case types cause problems, and they warrant particular attention and special measures. The oldest unresolved cases (started between 1997 and 2005) are predominantly in enforcement, small claims, and utility cases, and to a lesser extent litigation, and bankruptcy and liquidation cases. For further detail, see Section 3.

**22. Neighboring RS established specialized commercial courts in 2010 in an effort to improve efficiency and quality of commercial case management.** RS established five District Commercial Courts and one Higher Commercial Court in Banja Luka.<sup>17</sup> Prior to specialization, the clearance rate of commercial cases in RS Basic Courts was variable and unsatisfactory (see Table 2 below).

**Table 2. Clearance Rate in Commercial Cases in RS before Specialization, 2008-2009**

COURT	2008	2009
Basic Court in Banja Luka	99%	76%
Basic Court in Bijeljina	83%	115%
Basic Court in Doboј	72%	49%
Basic Court in Sokolac	70%	64%
Basic Court in Trebinje	84%	133%
Average	81.6%	87.4%

*Source: HJPC*

**23. The results of specialization appear to be mixed.** RS courts have been able to handle incoming cases and keep the clearance rate over 100 percent.<sup>18</sup> In some case types, RS courts process cases more quickly than in FBiH, such as in appeals of litigious cases where the average case duration is four times shorter. However, first instance litigation cases take longer in RS. So from the perspective of a court user with a two-instance litigation case, the wait is equally long and frustrating. Resolution of bankruptcy cases takes twice as long in RS as in FBiH (688 days).

---

<sup>17</sup> As of May 1, 2010, all commercial cases in the general jurisdiction in RS were transferred to these newly established commercial courts. There are 39 appointed judges in commercial courts in RS, 32 in District Commercial Courts and 7 in Higher Commercial Court in Banja Luka. The number of appointed judges has not increased since 2010. In October 2016, the HJPC passed a decision to increase the number of judge positions in District Commercial Court in Banja Luka by 8 judges; these positions will be filled only after the budget is provided.

<sup>18</sup> The specialized District Commercial Courts achieved clearance rates of 105 percent in 2012 and 101 percent in 2015.

**Table 3. Average Case Duration in FBiH and RS in 2015**

Case type	Average length of resolved cases		Average length of unresolved cases	
	FBiH	RS	FBiH	RS
Ip (Authentic Document Based Commercial Enforcement Cases)	602	402	608	437
Ip Kom (Authentic Document Based Utility Commercial Enforcement)	392	222	887	309
Mals (First Instance Small Claims)	702	580	655	656
Mals Kom (Utility First Instance Small Claims)	546	366	562	519
L (Liquidation)	304	286	238	206
Ps (First Instance Commercial Disputes)	391	789	348	646
Pž (Appeal Commercial Disputes)	423	109	600	119
Pžip (Appeal Enforcement Cases)	250	32	257	38
Rev (Revision)	393	319	385	259
St (Bankruptcy)	322	688	879	1,027

Source: *The HJPC Caseload Analysis 2016*

**24. From 2012 to 2015, both FBiH and RS reduced their backlogs, but FBiH focused more of its efforts on resolving the oldest backlogged cases.**<sup>19</sup> Across RS, the backlog of all cases decreased by 18 percent. This was largely due to efforts to resolve commercial litigation cases. Meanwhile the backlog of enforcement cases grew. The Higher Commercial Court in Banja Luka showed strong results in terms of backlog reduction (54 percent) in 2010 and 2011. However, from 2012 to 2015, the number of unresolved commercial cases at the RS Higher Commercial Court level increased by 51 percent. In all, the courts in RS have performed marginally better with separate court structures but there remains much room for improvement.

### *1.2.1 Procedural Bottlenecks in Case Processing*

**25. Procedural bottlenecks undermine court efficiency and efficacy in BiH.** Court performance is deeply affected by court management and organization, practice and procedure, and party discipline. Despite a general opinion that performance can be improved simply by hiring more judges, more significant improvements in FBiH could be achieved through procedural changes.

**26. Delays in scheduling court hearings are a significant procedural obstacle influencing efficiency and timeliness in FBiH courts.** Several years may pass (in certain cases over five years) between case filing and the first hearing. Hearings are cancelled or adjourned frequently and without strong justification. Case management systems (CMS) available in courts

<sup>19</sup> Of all backlogged cases in RS, the District Commercial Courts reduced the share of cases older than five years by three percent, while the number of backlogged cases older than three years fell by six percent. In FBiH, the share of backlogged cases older than five years fell by six percent, and the share of cases older than three years fell by five percent.

should be used to monitor the efficiency of hearings and detect irregularities to enable competent authorities, such as the Court President, the HJPC, and the Federal MOJ, to respond. When called for, appropriate disciplinary measures should be taken.

**27. Court Presidents and heads of departments should actively monitor case flows to prevent cases from becoming inactive.** The World Bank team heard of several instances where judges had left or taken long-term sick leave or maternity leave without their cases being reassigned. The CMS enables courts to monitor and respond to these issues, and procedures are in place to re-assign cases. Court Presidents and heads of department could do more to use their systems and relevant rules to prevent unnecessary delays.

**28. Often, proceedings lack clearly defined procedures, so practice is inconsistent between courtrooms and courthouses.** Attorneys complained of different procedures for accessing case files in different locations and of courts requiring different information for the same case type. This is of particular concern in simple cases, like business registration, where the same information should be required in each case. Simplification of processes, compliance with regulatory deadlines and regular consultation with judges would lessen party-court interaction and reduce delays.

**29. Stakeholders report that abuse of process is extensive and that judges do little to control it.** In particular, parties represented by attorneys reportedly use delay tactics to ‘bleed out’ their opponents. Abuses include avoiding service of process, failing to appear at hearings, requesting adjournments without sufficient justification, and interfering with witnesses prior to giving evidence. Procedural tools are available to judges to tighten control of proceedings but judges rarely deploy them. Stakeholders report that certain cases tend to take priority over others and that powerful parties find ways to have their cases heard faster (or slower) as desired. Disciplinary measures against attorneys and judges are rare and ineffective. This undermines parties’ trust in the integrity of the system.

**30. Expert witnesses are also a source of delay.** Expert witnesses are commonly appointed by judges to prevent their cases being overturned in appellate courts. However, there are instances where expert opinions add little or no value to the case. Expert witnesses are costly, so their excessive use drives up the cost of the case for the parties. Stakeholders also report that expert witnesses are a common source of adjournments and delays (i.e., their reports are not timely, they do not appear at hearings, their evidence is contested) and this extends the duration of the case. Furthermore, heavy reliance on expert witnesses creates opportunities for other procedural bottlenecks, including disputes over the choice of expert and over their testimony.

**31. Users also express frustration that related procedures are conducted in parallel without coordination.** This problem manifests most commonly in enforcement cases where courts often fail to join new cases to cases that have already been initiated. For example, a creditor may have no knowledge of whether another creditor has already initiated enforcement against the same property. As a result, a full procedure can be conducted by one creditor and in the end the profits from sale of the property must be paid to the creditor who filed a prevailing motion for enforcement.<sup>20</sup>

---

<sup>20</sup> See p. 125 and 126, Diagnostic assessment of the enforcement regime of final civil claims in Bosnia and Herzegovina USAID’s Justice activity in Bosnia and Herzegovina, March 2016; <http://usaidjp.ba/assets/files/publication/1465828693-diagnostic-assessment-of-the-enforcement-regime-of-final-civil-claims-in-bih.pdf>

## 1.3 Quality and Consistency in Decision-making

### 1.3.1 Structural Fragmentation and the Use of Case Law Harmonization Tools

**32. Effective harmonization of case law is a complex task in all court systems and is especially complex in BiH.**<sup>21</sup> Each Canton has its own case law and practice. Not all cases are eligible to seek extraordinary legal remedies from the Supreme Court of FBiH to harmonize case law between the Cantons. Furthermore, there is no supreme body to harmonize case law on similar matters between Cantonal Courts in FBiH and District Commercial Courts in RS.

**33. Practices within the courts exacerbate this problem.** Although commercial departments exist in FBiH, very few judges are truly commercial law specialists and judges move between departments. Many judges receive only a handful of commercial cases each year while also working on civil or administrative cases. Court Presidents reallocate judges and legal associates in and out of departments at will, sometimes rotating judges each year.

**34. Tools for case law harmonization exist, but are not effective.** These include departmental meetings, issuing of legal opinions, and the establishment of a Judicial Documentation Center at the HJPC. However, none of these have significantly contributed to a more uniform application of the law in FBiH. Practices within courts are uneven and often lack coordination. During the Feasibility Study, the team heard of several different practices that were unique to individual courthouses.

**35. Firms find this lack of harmonization particularly frustrating.** Businesses report that if their operations straddle several Cantons or both entities, they may be subject to different regimes in the same country without their knowledge. When disputes arise, firms and attorneys are often unable to predict the outcome of the case. This makes it difficult for firms to decide to litigate, and makes negotiation and out-of-court settlement unpredictable. Lack of case law harmonization creates the impression of unequal treatment, leading to suspicion and mistrust of the judiciary.

### 1.3.2 Appeals and Confirmation Rates

**36. From 2012 to 2015, appeals rates in Cantonal Courts in commercial cases varied between 11 and 14 percent, depending on the individual court and case type.** First instance courts in both entities had appeal rates in commercial cases ranging from 6 to 8 percent.<sup>22</sup> Higher than average appeal rates were recorded in Municipal Courts in commercial litigious cases, with 22 to 30 percent and bankruptcy cases with 12 to 24 percent. Lower or average appeal rates were recorded in enforcement (4 to 6 percent), liquidation (1 percent), small claims (5 to 10 percent) and registration cases (0.2 to 0.4 percent). Generally in undisputed case types or cases of small value, appeal rates were lower. Higher appeal rates are more common in higher value contentious cases, when more is at stake between the parties, and parties are more likely to have the finances to hire attorneys and wait for longer periods for appeal cases to be resolved.

---

<sup>21</sup> In BiH, case law is not a formal source of law. By applying provisions of prior decisions in current decisions the courts give direction for the practical application of law to others. Case law then becomes an important tool for interpreting the law, filling legal gaps, and establishing rule of law and legal certainty.

<sup>22</sup> Municipal and Cantonal Courts presented similar confirmation rates in commercial and non-commercial civil cases. Both Cantonal and Municipal Courts retained slightly more confirmed decisions in commercial matters. There were more reversed decisions in commercial matters while in non-commercial matters more decisions were modified by a higher court.

**37. In period from 2012 to 2015, the share of confirmed decisions varied between 76 and 81 percent in Municipal Courts and between 80 and 89 percent in Cantonal Courts.**<sup>23</sup> Confirmation rates recorded per case type in Municipal Courts varied from 73 to 79 percent in commercial litigious cases and from 75 to 97 percent in bankruptcy cases. In other case types, confirmation rates ranged from 58 to 94 percent (78 to 91 percent in enforcement, 58 to 87 percent in liquidation, 80 to 87 percent in small claims and 74 to 94 percent in registration). The percentage of modified decisions was under 10 percent for both instances. Partially reversed decisions were almost negligible at under 1 percent.

**38. Cantonal Courts displayed higher appeal and confirmation rates than the Municipal Courts.** Higher appeal and confirmation rates with Cantonal Courts indicate that parties may be abusing the appeals system as a delay tactic or to re-litigate their claim.

**39. Municipal Courts in 2015 had the lowest number of confirmed decisions in the last four years (76 percent) and the highest number of reversed decisions (14 percent) although the appeal rate was unchanged through the period.** The data points to a gradual decline in the quality of decision-making in these courts.

**40. The rate of confirmation of commercial cases in District Commercial Courts in RS is lower than in FBiH.** From 2012 to 2015 the share of confirmed decisions ranged from 72 to 79 percent in the RS District Commercial Courts and 70 to 79 percent in the Higher Commercial Court in Banja Luka. BiH's Cantonal Courts had 10 percent more of their cases confirmed than the High Commercial Court in Banja Luka. This suggests that establishing separate court structures does not necessarily guarantee better quality decisions.

**41. A range of measures would improve the quality of decision-making.** These include the education of judges, better use of the case law database and a structured process to harmonize case law in difficult areas. Appellate judges should, wherever possible, replace the decision of the lower court with their own rather than sending back decisions for review. In case of reversal, higher instance decisions should contain a precise explanation and instructions to be followed in subsequent proceedings.

### *1.3.3 Judicial Independence and Accountability*

**42. The Global Competitiveness Index 2015-2016 ranks BiH 97 out of 142 economies on judicial independence.** The principle of independence of courts is enshrined in the Entities' constitutions, laws on courts, and in the statutory and regulatory framework of Brcko District, although not in the BiH Constitution.<sup>24</sup> In the Country Report for BiH 2016,, the European Commission stresses that there are no formal procedures carrying penalties that offer legal or constitutional protection against undue influence or threats to judicial independence, resulting in unlawful and politically motivated attacks against the judiciary.<sup>25</sup> Judicial independence is compromised in individual cases, including through politically motivated threats on the judiciary.<sup>26</sup>

---

<sup>23</sup> The highest rate of confirmed decisions in commercial cases was recorded in 2013 in both Cantonal and Municipal Courts: 89 percent in Cantonal Courts and 81 percent in Municipal Courts.

<sup>24</sup> Section I Article 4 of the FBiH Constitution, Articles 121 and 121a of the RS Constitution, and Article 66 of the Statute of Brcko District.

<sup>25</sup> See p.16 Bosnia and Herzegovina 2016

Report, [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/Eval%20IV/GrecoEval4Rep\(2015\)2\\_Bosnia-and-Herzegovina\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/Eval%20IV/GrecoEval4Rep(2015)2_Bosnia-and-Herzegovina_EN.pdf)

<sup>26</sup> See p. 14 Country Report for BiH 2016,

[http://ec.europa.eu/enlargement/pdf/key\\_documents/2016/20161109\\_report\\_bosnia\\_and\\_herzegovina.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2016/20161109_report_bosnia_and_herzegovina.pdf)

**43. While the appointment processes for judges are based on procedures which evaluate candidates' professionalism and competence, these processes are reportedly politicized.** Independence of the judiciary is further undermined by the appointment of "additional judges" who do not enjoy the permanent status of a judge but are appointed for two year periods and subject to successive extensions.

**44. The accountability of judges also needs to be improved.** According to the European Commission Country Report for BiH 2016,<sup>27</sup> sanctions for breaching disciplinary and ethical rules fail to deter unethical conduct. The GRECO Fourth Evaluation Round Report 2016 also reports shortcomings in conflict of interest rules and in performance appraisals for promotion.

**45. The performance management system in the judiciary is sophisticated, but it has not generated incentives for improved performance.** The Criteria for Evaluating the Performance of Judges and Prosecutors combines the type and number of cases a judge resolved in one year with the qualitative results and other work achievements, including backlog reduction and timeliness.<sup>28</sup> The same performance criteria are applied to legal associates. Performance is evaluated by the Court President. The Court President is in turn evaluated by the President of the higher court. At the court level,<sup>29</sup> these criteria are used to measure court performance, and the results are attributed to the court president and used for statistical monitoring and comparing of courts. Unlike judges and legal associates, performance of staff is not specifically monitored and is graded in the same way as other civil servants. In this complex system, an overwhelming majority of judges meet or exceed performance standards, notwithstanding the long case processing times and high backlogs. This suggests that the criteria are set too low to meet the needs of users. There are no formal incentives to encourage courts as a team to work together to innovate, solve problems or boost court performance.

**46. The lack of independence in FBiH is partially due to fragmented budgetary planning.** Up to 14 institutions are involved in budget planning which causes inefficiency and makes it difficult to ensure available funds are targeted appropriately to meet needs equitably across the system. Independent judicial system evaluations argue that this fragmentation masks attempts by politicians to control and interfere in the judicial process.<sup>30</sup> The Government's attempts to reduce corruption by increasing the salaries of judges have yet to produce positive results.

#### *1.3.4 Training of Judges, Lawyers, and Court Staff*

**47. The quality of justice delivered by courts depends in large part on the quality and consistency of the education that judges and staff receive.** In a survey of over 2,500 legal academics and practitioners by the World Justice Project, the inadequate selection and training of judges was ranked among the most serious problems facing the BiH judiciary.<sup>31</sup>

---

<sup>27</sup> Ibid note 26, see p.13.

<sup>28</sup> The purpose of the system is to objectively evaluate the performance of judges and legal associated to inform future advancement and disciplinary measures. See <http://vsts.pravosudje.ba/vstv/faces/vijesti.jsp?id=7907>; [http://www.pravosudje.ba/vstv/faces/docservlet?p\\_id\\_doc=28083](http://www.pravosudje.ba/vstv/faces/docservlet?p_id_doc=28083); [http://www.pravosudje.ba/vstv/faces/docservlet?p\\_id\\_doc=28798](http://www.pravosudje.ba/vstv/faces/docservlet?p_id_doc=28798).

<sup>29</sup> Calculated as an arithmetic mean of results achieved by all judges and legal associates in the court.

<sup>30</sup> For further details GRECO Fourth Evaluation Round Report 2016, p. 27 [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/Eval%20IV/GrecoEval4Rep\(2015\)2\\_Bosnia-and-Herzegovina\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/Eval%20IV/GrecoEval4Rep(2015)2_Bosnia-and-Herzegovina_EN.pdf)

<sup>31</sup> See Report on the Observance of Standards and Codes Insolvency and Creditor/Debtor Regimes Bosnia and Herzegovina 2015, p. 11.

**48. Judges serving on complex commercial cases do not have to be specialized or accredited.** Indeed, human resource practices discourage specialization of judges in commercial matters. The Court Rulebook, the Court President adopts the annual schedule of judges and judicial assistants, associates, and advisers.<sup>32</sup> In practice, this means that judges can be moved each year to different departments (e.g., commercial, civil, non-contentious, enforcement) based on the Court President's decision.

**49. The quality and quantity of training for commercial cases is inadequate.** In FBiH, the mandate for judicial training rests with the Public Institution Centre for Judicial and Prosecutorial Training of FBiH (CJPT). Judges and prosecutors are obliged to attend at least three days of training organized by CJPT each year. However, there is no obligation to choose trainings in one's field of work. Stakeholders report that attractive training venues are often the decisive factor in selecting trainings.

**50. According to the CJPT, approximately 80 percent of judicial education is financed by donors.** Commercial law trainings have been delivered by the European Bank for Reconstruction and Development, Commercial Law Development Program, and Deutsche Stiftung für Internationale Rechtliche Zusammenarbeit. Currently, the IPA 2012 project "*Capacity Building for Judicial Reform in Bosnia and Herzegovina*" is completing implementation. Specific trainings were delivered in the fields of commercial law and European law and a new training curriculum was drafted for the training centers. A possible new donor-funded project that would aim to strengthen the capacity of judges to resolve commercial cases through specialized trainings is in the design and proposal phase. This project is welcomed and could boost the modest coverage on commercial matters in FBiH.

**51. The CJPT does not provide any courses on financial literacy covering the basics of accounting, finance and economics.** Limited knowledge of business transactions and commercial practices remains an issue among newly appointed judges, according to ICR ROSC 2015. Businesses complain that judges often lack sufficient expertise in and understanding of complex commercial transactions.

**52. Although regulations recognize that commercial law is a separate domain for educators, little progress has been made in creating a pool of expert educators for commercial matters.** Trainers are chosen by donors and/or the CJPT. Trainers chosen by the CJPT are usually judges and university professors who are enlisted by HJPC as permanent educators. This list was last updated in 2013 and contains only one trainer for commercial law. The CJPT is authorized to choose ad hoc educators if necessary, so they could add commercial law educators to the existing list.

**53. Training focuses on criminal law, leaving commercial law on the margins.** Of the 202 trainings that the CJPT will conduct in 2016 only eight cover commercial matters. The six courses offered in the first half of 2016 were attended by 116 judges and legal associates.<sup>33</sup> In 2015, there were five trainings in commercial matters attended by 105 judges and legal associates. The highest participation (91 judges) occurred at five regionally organized trainings on the new Companies Law of FBiH. This was likely because extensive legislative changes in the Companies Law piqued the interest of judges and because regional venues made the trainings more accessible. Although this example seems to be positive, the number of attendees in Sarajevo (only 14) was low in comparison to other regions.

---

<sup>32</sup> Article 25 Court Rulebook.

<sup>33</sup> This number is even lower if one notices that out of eight education five are identical but organized through CJPT educational centers in FBiH (Lukavac, Zenica, Mostar, Bihać, Sarajevo). Having that in mind there are only three types of education in commercial matters organized in 2016.

**54. Only about half of judges and legal associates assigned to commercial cases attend commercial trainings.** HJPC data as of July 2016 indicates that there are 269 judges and legal associates working on commercial cases. The number of commercial trainings attendees was just over 100 in 2015 and 2016.

**55. Surveys show that judges would appreciate more training in this area.** The quality of trainings appeared to be high, but diversity and the number of trainings was considered insufficient. The CJPT carries out anonymous, optional surveys and analyzes satisfaction with trainings. In 2015 and 2016, all of the trainings in commercial matters were rated highly—between 4.47 and 4.93 out of 5—and they all met or exceeded expectations. However, surveys show that there needs to be more trainings on practical application in commercial matters and encompassing different areas of the economy and business, including international regulations.

**56. There is no effective quality assurance process for training.** Trainings do not include entrance or exit quizzes which would enable training assessment, contribute to motivation, influence personal engagement, and could be connected to certification.

#### **1.4 Accessibility of Courts for Businesses**

**57. Stakeholders report that access to justice for businesses in FBiH is inadequate, particularly for MSMEs.** Due to their size, MSMEs are particularly constrained by an ineffective and inefficient judicial system and cumbersome court procedures in setting up, operating, and growing a business. Unclear and/or complex requirements for court registry entries, inconsistent application of open access to public registries, inconsistent legal practice, excessive length of proceedings, and non-compliance with legal deadlines are only some of the factors that hinder access to justice for businesses. Small claims cases take an average of 702 days to be resolved. It would not be unusual for a court case to be adjudicated long after an MSME has been liquidated. Even small claims values can represent a significant part of an MSME's income. The removal of these constraints would ease operations and stimulate growth.

**58. Lack of access to court decisions contributes to unpredictability and inconsistent jurisprudence.** Not all judgments are published. Public access to online case law is limited and judicial professionals seeking access must pay a subscription fee.

**59. The cost of litigation is high and increases as delays occur.** According to the World Justice Project, while dispute resolution time is the most pressing issue facing the BiH judiciary, court fees, attorney fees, and legal aid also present significant challenges to the judicial system. Together, these factors impede individuals' and businesses' access to the courts. According to the World Justice Project Rule of Law Index 2016, BiH scores 0.56 out of 1 on accessibility and affordability of civil justice.<sup>34</sup>

**60. Court fees are extremely complex in FBiH, making it difficult for parties to estimate likely costs.** There are 14 laws on court fees and fee tariffs which apply in BiH depending on court jurisdiction. For proceedings at the Supreme Court of FBiH, court fees are regulated by a Federal law. For proceedings under Municipal and Cantonal Courts, individual Cantonal laws are applied. Some fees are several times larger in one Canton compared to another.<sup>35</sup> The fees for decisions in merit and appeals are sometimes the same value as fees for claims, but can be up to double that amount. The biggest range in fees is in business registration cases where, for example, the fee in

---

<sup>34</sup> See p.5 Rule of Law Index 2016,

[http://worldjusticeproject.org/sites/default/files/media/wjp\\_rule\\_of\\_law\\_index\\_2016.pdf](http://worldjusticeproject.org/sites/default/files/media/wjp_rule_of_law_index_2016.pdf)

<sup>35</sup> For dispute values of 1,500 – 3,000<sup>35</sup> BAM in observed Cantons<sup>35</sup> fees range from 80 to 100 BAM. This is equal to 0.7 percent of GDP per capita in Sarajevo and double that—1.4 percent of GDP per capita—in Goražde.

Mostar is approximately four times higher than in Goražde.<sup>36</sup> Furthermore, the 10 separate laws for fees at Municipal and Cantonal levels have each undergone several amendments over the years. Even if parties knew where to research, there is no official consolidated information available. As a result, parties are unable to make an informed decision to pursue litigation, and as a result many are deterred from lodging valid claims.

**61. Alternative Dispute Resolution (ADR) provides an imperfect alternative to filing in court.** According to the World Justice Project, inefficient ADR methods are a serious problem facing the BiH judiciary. BiH scores 0.66 out of 1 for the accessibility, impartiality, and effectiveness of ADR mechanisms, which is lower than the average of the 97 countries assessed.

**62. Firms can self-represent in FBiH courts, but most firms choose to hire an attorney to represent them.** Firms report hiring attorneys mainly because the relevant legal expertise cannot be found among their employees. Some stakeholders also report that firms hire an attorney to get them good connections in the judiciary.

## Analysis of the Most Problematic Case Types

**63. Business registration, small claims, enforcement and bankruptcy tend to be the most problematic commercial cases in FBiH.** These cases suffer from large backlogs, long processing times, low clearance rates, and unsatisfactory court service. They cause the most frustration for court users. There are particular reasons why each of these case types underperform. The following section unpacks these issues to arrive at specific measures to improve performance in these areas.

### 1.5 Business Registration Cases

**64. The 2017 Doing Business report ranked BiH 174<sup>th</sup> on ease of business registration.**<sup>37</sup> Given that business registration accounts for 51-55 percent of all incoming cases in FBiH,<sup>38</sup> improvements in this category could lead to a significant improvement in overall court performance.

---

<sup>36</sup> This is equal to 4.3 percent of GDP per capita in Mostar and 1.4 of GDP per capita in Goražde.

<sup>37</sup> See <http://www.doingbusiness.org/data/exploreeconomies/bosnia-and-herzegovina/>

<sup>38</sup> The average number of incoming business registration cases from 2012 to 2015 was stable at 32,000 to 33,000 cases per year.

**Figure 4. Steps for Establishing a Business in FBiH**



*Source: Foreign Investment Promotion Agency of Bosnia and Herzegovina*

**65. At FBiH level, the business registration procedure is regulated by a range of laws<sup>39</sup> and other regulations, leading to inconsistent practice.<sup>40</sup>** Registration of a business entity is the responsibility of the competent court, determined by the location of the business entity. The procedure for starting a business is explained in Figure 4. Businesses are required to provide a range of approvals and other documents in order to initiate a business registry procedure, and laws are still not clear and are subject to local interpretation. As a result, the disposition time for business registration procedures in the Municipal Court in Sarajevo was 25 days, while the Municipal Courts in Livno and Orašje resolve them in a single day. There is no legal reason why business registration cases should take 25 days.

**66. There is a backlog of business registration cases in courts in FBiH, probably because of abandoned registrations.** Consultations with court staff and judges reveal that this is likely because the party which initiated the procedure decided not to pursue registration, leaving the case “open” in the system. It is not known whether these cases are abandoned because parties became frustrated by the complex procedure or for other reasons. Nonetheless, abandonment seems to be a frequent occurrence, especially at the Municipal Court in Sarajevo, and perpetuates high levels of informality in the economy. On the positive side, clearance rates in business registration cases in all FBiH courts approximate 100 percent, indicating that courts are not falling further behind over time in processing these cases.

**67. Businesses are required to undergo the full registration procedure any time there is a change in their documentation.** The competent court must verify any change, be it a change in business operations or change of address. There is no special procedure for amending registration documents, so courts and firms must complete the full registration procedure again. Full fees are charged for making these minor changes.

**68. Many countries in the region have moved business registration from courts and created separate entities<sup>41</sup> to deal with this procedure.** Business registration cases do not require much judicial work, but in FBiH, judges argue that there is a role for them in this

<sup>39</sup> There are two laws regulating establishment of business entities in FBiH (Framework Law on Registration of Business Entities in Bosnia and Herzegovina, and Law on Registration of Business Entities in the Federation Bosnia and Herzegovina) and the Law on Companies of the Federation of Bosnia and Herzegovina. There is a separate legislation for Republika Srpska and Brcko District.

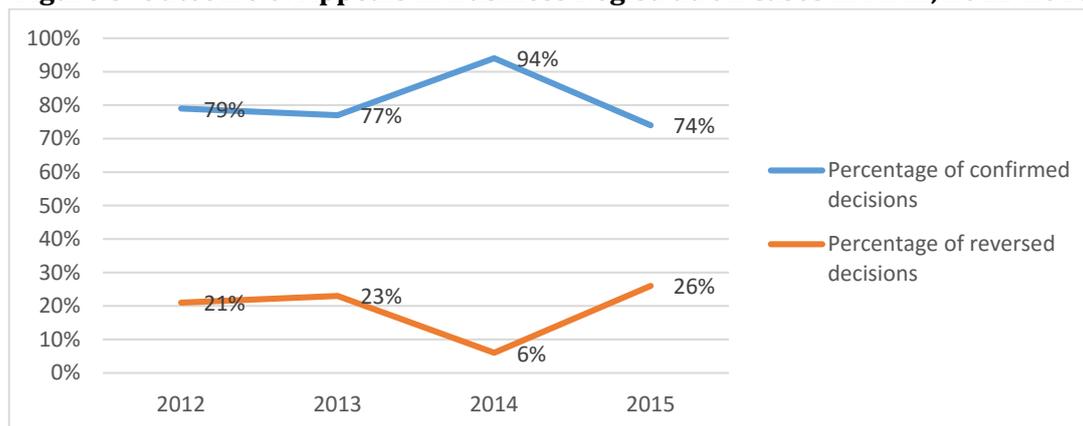
<sup>40</sup> One positive aspect of the legislative framework in FBiH is that there is no difference between a domestic and foreign business entity.

<sup>41</sup> For example, in Serbia there is a Serbian Business Registration Registry. In Macedonia, there is a central registry of the Republic of Macedonia.

procedure that should not be delegated to anyone else. There are also financial incentives for the courts to retain these cases. Businesses are required to pay a court fee which cannot be waived and so courts see this as a lucrative operation that they are eager to retain.

**69. The quality of processing in business registration case is declining.** Few registration cases are appealed. But when they are, their confirmation rate is only 74 percent at the higher court in 2015, which is comparatively low in the Western Balkans region. This rate is down from a peak of 94 percent in 2014.

**Figure 5. Outcome of Appeals in Business Registration Cases in FBiH, 2012-2015**



Source: *The HJPC Caseload Analysis 2016*

## 1.6 Small Claims Cases

**70. FBiH applies simplified procedures to disputes involving small claims.** Small claims are disputes involving sums up to a threshold of 5,000 BAM.<sup>42</sup> Small claims can be resolved through a dedicated procedure in which self-representation is allowed and appeals against judgments are limited.<sup>43</sup> In the first instance, cases are handled by an individual judge or by a judicial assistant. There are no specialized small claims judges strictly speaking but, in practice, courts assign judicial assistants to deal with this type of case and a judge provides oversight of their work. Bigger courts usually have small claims departments: in the Sarajevo Municipal Court a judge is president of the department and 19 judicial assistants.

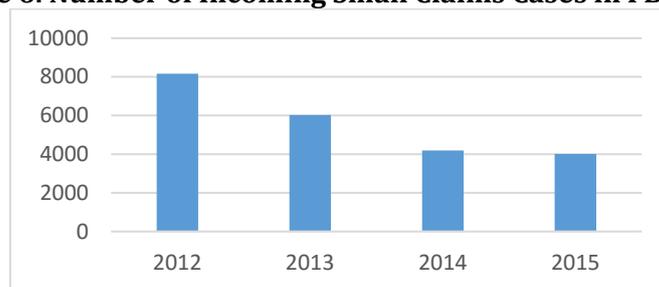
**71. Small claim cases make up a decreasing proportion of commercial cases.** The number of incoming small claims cases has fallen by more than 45 percent over the last four years. As a result, there has also been a 35 percent decrease in pending small claim cases over the same time period.<sup>44</sup> In 2015, of Sarajevo's 22,652 incoming commercial cases only 1,736 were small claims cases (43 percent of all incoming small claim cases in FBiH). This was a significant decrease from almost 5,000 in 2012.

<sup>42</sup> Disputes involving small claims also include cases that are not of a pecuniary nature for which the plaintiff has accepted a sum of money not exceeding that amount, as well as disputes relating to the transfer of property not exceed that amount. Notably, plaintiffs can also obtain a temporary security over the defendant's movable assets if there is a risk that assets may convey.

<sup>43</sup> Civil Procedure Code, small claims procedure is regulated by articles 428-433.

<sup>44</sup> In 2012 the number of unresolved small claims cases in FBiH Municipal Courts was 12,107, while in 2015 it was 7,940.

**Figure 6. Number of Incoming Small Claims Cases in FBiH, 2012-2015**



Source: *The HJPC Caseload Analysis 2016*

**72. However, a backlog remains due to the lengthy processing times for unresolved small claim cases, which average 655 days.** The number of resolved small claims fell from 3,700 in 2012 to 2,365 in 2015, increasing the backlog. This is most significant in Sarajevo Municipal Court where there are 6,171 unresolved small claims cases. One would expect small claims to be dealt with much more quickly.

**73. Small claim cases have the longest disposition time among all cases, possibly due to judicial discretion.** The average disposition time for small claim cases is 702 days. This is extremely high compared to the CEPEJ average of 127 for civil and commercial non-litigious cases.<sup>45</sup> Stakeholders report that judges may be choosing to deal with the more complex cases first and not prioritizing small claims cases.<sup>46</sup>

**74. More could be done to expedite the resolution of small claims in FBiH.** Many countries have faster small claims processes.<sup>47</sup> Some EU member states have developed high-performing systems to fast-track these cases. Applying lessons from those states may be warranted. Reforms to this procedure would deliver faster justice to many more people, and would particularly help MSMEs, the poor and the middle class. Such reform would also significantly improve judicial statistics across the FBiH judiciary, free up the time of judges to deal with more complex cases, and improve the perception of the courts among citizens and businesses.<sup>48</sup>

**75. Small claim cases show a relatively high percentage of confirmed decisions (83 percent compared to an average of 78.5 percent).** However, the highest percentage of modified decisions was also among small claim cases (10 percent). The rate of modified decisions suggests that there are opportunities for second instance courts to unify court practice and signal the correct practice to the Municipal Courts. Where possible, appellate courts should reduce the percentage of reversed decisions by replacing the decision of the first-instance court.

<sup>45</sup> Majority of CEPEJ countries include bankruptcy cases in the group of civil and commercial non-litigious cases.

<sup>46</sup> See p. 102 Civil law module, training material, <http://www.rs.cest.gov.ba/index.php/pocetna-obuka/230-modul-2-graanska-oblast/file>

<sup>47</sup> According to Doing Business data, 128 economies worldwide have either a small claims court or a simplified procedure. In the EU, all but five EU jurisdictions have some form of small claims or simplified procedure.

<sup>48</sup> Over time, the low thresholds could also be lifted to allow more citizens and business to make use of the procedure. For example, in the EU the highest threshold can be found in the Netherlands (25,000 EUR), while in Portugal, Spain and Austria ranges between 15,000 and 20,000 EUR. In Slovenia, threshold is 4,000 EUR.

**Table 4. Appellate Results for Small Claim Cases in FBiH, 2012-2015**

Year	Percentage of confirmed decisions	Percentage of modified decisions	Percentage of reversed decisions	Percentage of decisions reversed in part
2012	82%	9%	9%	0%
2013	87%	6%	7%	0%
2014	80%	15%	5%	0%
2015	82%	11%	6%	1%
Average	83%	10%	7%	0%

Source: The HJPC Caseload Analysis 2016

## 1.7 Enforcement Cases

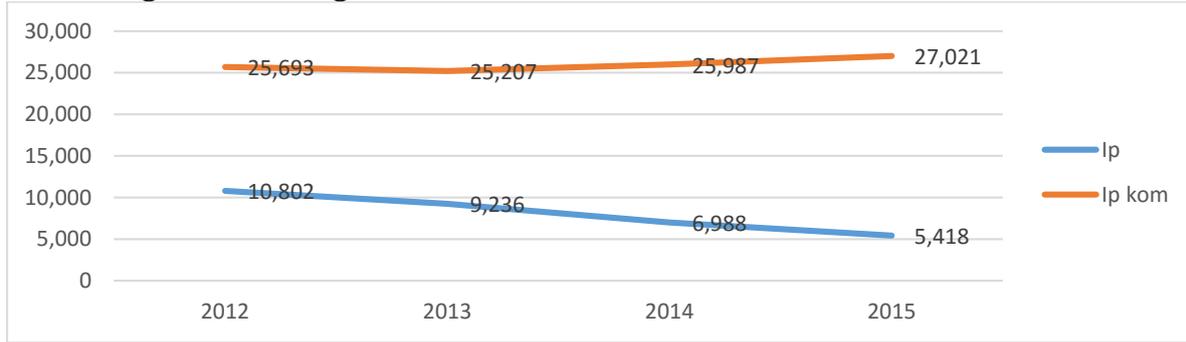
**76. Enforcement of unpaid claims is inefficient and is one of the biggest challenges of the legal system in FBiH.** According to the FIC Business Barometer 2015, investors consider enforcement of court rulings among the top five constraints impacting operations in BiH. Businesses consider enforcement as the weakest link of the credit legal system in BiH and cite it as one of the main reasons for not offering better conditions for loans and credits. In addition, according to the 2011 Global Integrity Report, judicial decisions are often ignored and are not enforced by the state.

**77. Enforcement of commercial decisions needs to be streamlined, accelerated and made more consistent.** Flaws in the execution system are the result of the general economic situation, ineffective legislation and poor implementation of execution procedures. Substantial court backlogs are mainly caused by enforcement cases, predominantly deriving from utility bills. According to the Doing Business 2017 Report, enforcement of commercial contracts involves 37 procedures, costs 36 percent of the claim value, and takes on average 595 days. The Investment Climate Statement 2015 finds that enforcement of courts and government agencies' decisions is often unpredictable and intermittent. ICR ROSC 2015 reports that most judges do not sanction procedural bad faith or the abusive use of procedural mechanisms in enforcement cases, which further delays the proceedings.

**78. Court performance data in FBiH for enforcement cases reveal that the courts demonstrate little capacity to manage the caseload.** No clear progress was seen from 2012 to 2015. The backlog of utility enforcement cases<sup>49</sup> - which make up the majority of enforcement cases - is increasing. Absent pending enforcement cases in courts without commercial departments, there are 32,500 pending enforcement cases (see Figure 7). In addition, 7,512 enforcement and utility enforcement cases were pending in Municipal Courts with no commercial departments.

<sup>49</sup> Utility enforcement cases are registered under Ip kom.

**Figure 7. Backlog in Commercial Enforcement Cases in FBiH, 2012-2015<sup>50</sup>**



Source: *The HJPC Caseload Analysis 2016*

**79. In 2015, two of the oldest unresolved commercial cases were enforcement cases initiated in 1997.** The average duration of unresolved enforcement cases in 2015 was 608 days, and for utility bill enforcement cases it was 887 days. In the same year, the average disposition time was 296 days for non-utility enforcement and 4,244 for utility enforcement cases.

**80. Confirmation of enforcement cases by higher instance courts was in line with the average for commercial cases.** Confirmed decisions ranged from 75 to 81 percent. Depending on the year, the percentage of reversed decisions was up to 8 percent higher than the average for commercial cases.

**Table 5. Outcome of Appeals in Enforcement Cases in FBiH, 2012-2015**

Year	Percentage of confirmed decisions	Percentage of modified decisions	Percentage of reversed decisions	Percentage of decisions reversed in part
2012	75%	3%	22%	0%
2013	81%	1%	18%	0%
2014	79%	4%	17%	0%
2015	78%	7%	14%	1%
Average	78%	4%	18%	0%

Source: *The HJPC Caseload Analysis 2016*

**81. Large creditors and debtors play an important role in the enforcement caseload.** As these are mostly publicly-owned companies that do not screen cases according to the likelihood of successful collection, there is extensive double-counting and inflation of cases. Government agencies are also the debtors in a significant number of cases. The role of large creditors and debtors on the judicial system should be taken into account in developing a strategic approach to the resolution of this backlog.

**82. The chronic problems with enforcement cases have been recognized by the BiH authorities.** Donor activities have attempted to address the question of enforcement, but with few results. Resources should be invested and appropriate strategies adopted to tackle the volume of utility cases in enforcement. Only by a coordinated and pragmatic approach can improvements be achieved through a reasonable set timeframe.

<sup>50</sup> Does not contain cases pending in Municipal Courts outside of Canton center in courts with no commercial jurisdiction.

**83. The USAID Justice Project in BiH<sup>51</sup> reports the main areas that need to be addressed to improve the efficiency of the enforcement system are: legislation, organization, technology support, and resources.** Legal framework issues include a lack of uniformity, legal gaps and inefficiencies, and faults laws such as statute of limitations, registration of legal entities, mortgage for tax debts, and enforcement of tax claims. Organizational problems include excessive formalism in the role of the judge, inconsistent organization of work in different courts, recruitment and status of court bailiffs, lack of capacity development of judges and bailiffs, and belief among the public that non-payment will not result in collection. Shortcomings of the enforcement process also include excessive reliance on movable assets, inefficiency of auctions and sales, and unclear definition of fees and costs. Access to information still remains complex and labor intensive. Information technology solutions should be used to facilitate enforcement proceedings since retrieval of information about the debtor and his or her assets is of crucial importance. Further efforts should be made in order to fully utilize the benefits of the various information systems in use.

**84. Three possible avenues are available, based on the analysis above: maintaining enforcement in the courts; introducing public agencies or services for enforcement; or introducing a self-employed enforcement system.** First and foremost, the roles of judges and bailiffs need to be reconsidered. The creation of a highly qualified legal professional of enforcement bailiffs could have a positive influence on the efficiency and effectiveness of the enforcement system. The central role of judges and court intervention could be reduced to a minimum. An organized structure for court bailiffs and judges with training and opportunities for exchange of case law, experience and practices should be provided. Mechanisms would also need to be put in place to ensure the integrity of the work of bailiffs and minimize corruption risks in the profession.

**85. Next, legal gaps and inefficiencies should be addressed through amendments to legislation, improved court practice through harmonization, and interpretation of legal provisions to increase efficiency.** The distribution of tasks and responsibilities between judges, legal associates and clerks/typists needs to be reorganized. Tasks which are purely administrative or procedural in nature should be delegated to enable judges to focus exclusively on contested matters in enforcement procedure. Web services for data exchange between the data holder and the CMS should be developed and introduced. Finally, a strategic approach to enforcement case backlog reduction should be adopted.

## **1.8 Bankruptcy Cases**

**86. Refinements to the Bankruptcy Law in FBiH are needed.** The regime is relatively comprehensive, but the regime is biased towards piecemeal asset liquidation in law and practice.<sup>52</sup> Bankruptcy proceedings are slow and cumbersome. They often do not maximize the value of a firm's assets and recoveries by the creditors as a whole. Amendments of the Bankruptcy Law are being developed with the support of the International Financial Corporation (IFC). The draft law is at an advanced stage of preparation.

**87. Disputes related to bankruptcy cases are heard before the Municipal Courts' Commercial Departments, Cantonal Courts hear appeals.** Bankruptcy proceedings in the first instance are handled by an individual judge. There are no specially-designated bankruptcy judges but, in practice courts designate judges to deal with these cases. Three judges in a panel session

---

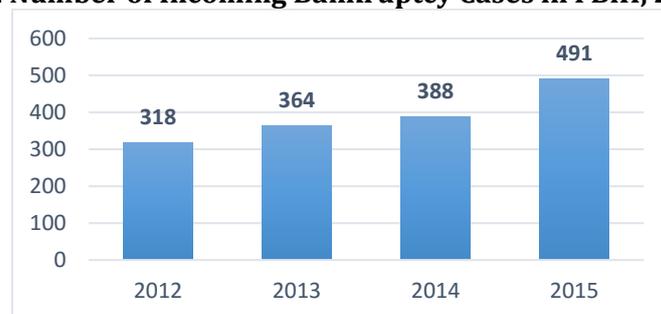
<sup>51</sup> USAID Justice Project in BiH has in March 2016 published Diagnostic Assessment of the Enforcement Regime of Final Civil Claims in Bosnia and Herzegovina. Diagnostic Assessment identified the utility bills backlog is significant in a very limited number of Municipal Courts in the FBiH.

<sup>52</sup> The World Bank, Report on the Observance of Standards and Codes Insolvency and Creditor/Debtor Regimes, April 2015.

decide on appeals. Appeals on decisions in bankruptcy proceedings are very rare. Given the complexity of bankruptcy legislation, further specialized training through CJPT should be available for judges presiding over these cases.

**88. Although the number of bankruptcy proceedings remains quite low in proportion to total commercial cases, the number of incoming bankruptcy cases has increased by 65 percent over the last four years.** Over 85 percent of bankruptcy cases are heard in the Municipal Courts in Sarajevo, Mostar, Zenica, Tuzla and Bihać.

**Figure 8. Number of Incoming Bankruptcy Cases in FBiH, 2012-2015**



*Source: The HJPC Caseload Analysis 2016*

**89. The number of pending bankruptcy cases has increased by 23 percent over the last four years.**<sup>53</sup> In 2015, 94 bankruptcy cases were filed at the Sarajevo Municipal Court. At the end of December 2015 the same Court had 118 unresolved bankruptcy cases.

**90. The HJPC's Ageing List of unresolved cases enables Court Presidents to analyze pending bankruptcy cases and follow timeliness and implementation of a backlog reduction plan.** The Ageing List reveals that many unresolved bankruptcy cases remain caught in the justice system. Of 480 unresolved bankruptcy cases at the end of 2015, 66 cases are older than five years and 30 cases are older than 10 years. Any case older than four or five years is likely to violate Article 6 of the European Convention on Human Rights (ECHR) as well as other international and European standards.

**91. One of the reasons for the backlog is the duration of unresolved bankruptcy cases in FBiH (on average 879 days).**<sup>54</sup> FBiH scores poorly on disposition time of resolved bankruptcy cases, with an average of 322 days compared to the EU average of 220 days for insolvency cases.<sup>55</sup> According to the Doing Business Report 2017, most delays in proceedings are due to delays in the sale of the immovable property.

**92. The HJPC is addressing the problem of unresolved bankruptcy cases before courts in BiH.**<sup>56</sup> Since 2014, courts have been obliged to develop action plans for resolving bankruptcy cases and cases derived from bankruptcy procedures. These action plans are updated regularly and a HJPC working group monitors their implementation. In addition, the HJPC organized a number of specialized trainings on bankruptcy issues for judges. A new round of specialized trainings will include bankruptcy trustees. These actions may have helped curtail the increase in

<sup>53</sup> In 2012 the number of unresolved bankruptcy cases in FBiH Municipal Courts was 391, while in 2015 it was 480.

<sup>54</sup> Doing Business 2017 reports that resolving insolvency in Bosnia and Herzegovina takes 3.3 years in comparison to 2.2 years in Europe and Central Asia. In comparison, the average length of unresolved commercial cases in FBiH is 602 days.

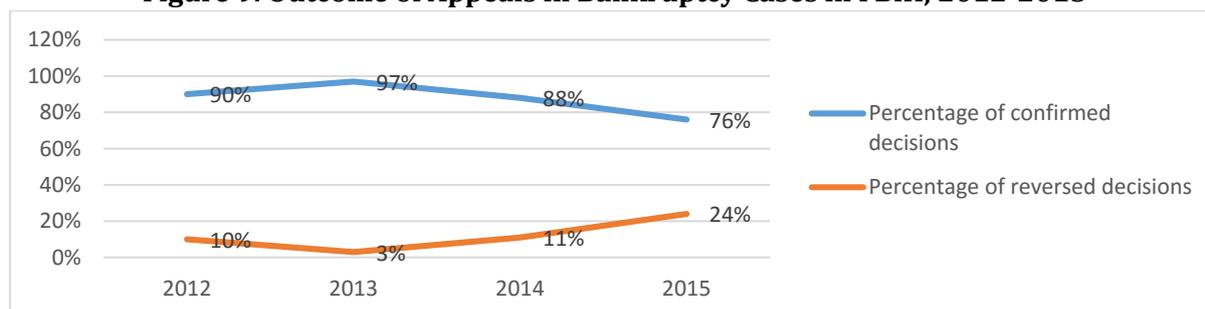
<sup>55</sup> CEPEJ 2016 Report has a separate chapter on specific categories of civil cases (litigious divorce, employment dismissal and insolvency cases). It should be noted that limited number of countries provided data for specific categories of civil cases..

<sup>56</sup> Activity is supported by Norway and Sweden.

bankruptcy cases but, as seen above, have not allowed courts to improve their clearance rates in these cases.

**93. 88 percent of bankruptcy decisions are confirmed compared to an average of 78.5 percent for all cases.** Most of the decisions that are not confirmed are sent back to the first instance court to start again rather than amended by the appellate court. Bankruptcy cases make up the lowest percentage of amended decisions (1 percent). Stakeholders report that this very low rate of amended decisions is a cause for concern, suggesting that appellate courts are not taking the opportunity to signal correct court practice to lower courts and thereby harmonize court practice.

**Figure 9. Outcome of Appeals in Bankruptcy Cases in FBiH, 2012-2015**



Source: *The HJPC Caseload Analysis 2016*

**94. Divided competence between bankruptcy and litigation judges contributes to the delay of bankruptcy proceedings and creates the risk of inconsistent interpretation of similar conflicts related to the same bankruptcy case.**<sup>57</sup> One of the challenges in bankruptcy cases is the limited competence of the bankruptcy judge in making the main decisions to be issued. Other disputes that may (and typically do) arise in the course of bankruptcy are referred to other judges in the Litigation Department. Court practice should be clarified and enhanced by, for example, adopting a system of attraction of jurisdiction to ensure that the bankruptcy process is not halted due to ongoing disputes.

**95. The fact that appeals stay the bankruptcy process**<sup>58</sup> can further cause significant delays. Indeed such delays are occurring in practice. The Bankruptcy Law should be amended to provide that only appeals in particular instances be permitted to stay the bankruptcy process.

**96. Responsibilities of trustees are not clearly defined and liabilities are rarely enforced.** Bankruptcy judges may appoint, supervise and may remove a trustee from a particular bankruptcy case at their own discretion. The Federal Ministry of Justice (MOJ) may cancel the license if a trustee is twice removed from bankruptcy proceedings by a judge. Legislation should be amended to limit judges' discretionary power to appoint a bankruptcy trustee through use of random or alphabetic rotation of trustees and by requiring the rotation of trustees. This would also improve public perception of fairness.

**97. The lack of a clearly specified remuneration system for bankruptcy trustees in the Bankruptcy Law impedes efficiency in these proceedings.**<sup>59</sup> Judges use several criteria at their discretion for establishing trustee remuneration, such as the value of the bankruptcy estate, number of creditors and complexity of the case. Usually, monthly remuneration for the trustee is

<sup>57</sup> The World Bank, Report on the Observance of Standards and Codes Insolvency and Creditor/Debtor Regimes, April 2015.

<sup>58</sup> Except regarding specific appeals, such as a decision to remove the trustee or member of the trustee board.

<sup>59</sup> The World Bank, Report on the Observance of Standards and Codes Insolvency and Creditor/Debtor Regimes, April 2015.

established in the early stages of the procedure. There is no ceiling on the trustee's remuneration over the course of proceedings. This can act as an incentive to delay bankruptcy proceedings. A remuneration system with appropriate incentives for efficient performance by the bankruptcy trustee and prompt completion of bankruptcy proceedings needs to be established.

**98. Bankruptcy trustees come from different professions, may lack a legal background and are not required to seek legal assistance.** Since legal assistance to bankruptcy trustees is not mandatory, judges do not require that trustees request legal advice. Legislation should be amended to empower the bankruptcy judge to require the bankruptcy trustee request legal assistance where needed.

## Models of Specialization and Lessons from Comparator Jurisdictions

**99. A growing number of countries have chosen to specialize commercial cases in one form or another.** Of the 190 economies considered in the Doing Business Report 2017, 99 have a specialized commercial jurisdiction, whether in the form of dedicated stand-alone courts, specialized commercial departments within existing courts, or specialized judges within general civil courts.<sup>60</sup> According to the Doing Business methodology, countries that have specialized in some way are awarded points towards the score for ease of enforcing contracts.

**100. In 2013, the World Bank published guidance on how policymakers can determine if specialization is warranted and what model of specialization may be most appropriate.**<sup>61</sup> That guidance emphasizes that the decision to specialize jurisdictions should be informed by the opportunities and risks arising in the particular context.

**101. The 2013 World Bank Guidance reviews the available evidence on specialization and emphasizes that its impacts are not straightforward and should not be assumed.**<sup>62</sup> The impact of judicial specialization depends on the conditions under which generalist and specialized courts operate, such as the mechanisms for selection of judges, the degree of technicality of their work, the substantive and procedural legal rules that govern the court, the configuration of interest groups in the field, and whether focused and systematic training is provided. As a result, the relationship between specialization and the outputs that courts produce is highly complex. It is also possible that judicial specialization might ease the pressure of heavy caseloads on courts by enhancing judicial efficiency but these gains in efficiency are assumed rather than measured.

**102. Specialization is justified where it promotes the efficient administration of justice and ensures the quality of proceedings and judicial decisions.**<sup>63</sup> Proponents for specialization generally argue that it has three advantages: improved efficiency, higher quality and uniformity of case law. Diverting a class of cases to specialized courts takes some of the burden of growing caseloads off the shoulders of courts of general jurisdiction. A specialist court

---

<sup>60</sup> Doing Business 2017, *Equal Opportunity for All*, <http://www.doingbusiness.org/~media/WBG/DoingBusiness/Documents/Annual-Reports/English/DB17-Report.pdf> <http://www.doingbusiness.org/~media/GIAWB/Doing%20Business/Documents/Annual-Reports/English/DB16-Full-Report.pdf>

<sup>61</sup> H. Gramckow, J. Walsh, *Developing specialized court services – International Experience and Lessons Learned*, the World Bank, 2013.

<sup>62</sup> Gramckow, J. Walsh, *Developing specialized court services – International Experience and Lessons Learned*, the World Bank, 2013, p. 6-7.

<sup>63</sup> Para 30, Opinion (2012) No. 15, CCJE.

enhances the quality and uniformity of decisions, particularly in complex areas of law.<sup>64</sup> Arguably, these gains are made by increasing judges' experience and skill through specialization. Judges may elect to work in these courts due to their interest and skill set and they become experts as they specialize. In turn, this expertise can foster greater efficiency in deciding cases and greater effectiveness in reaching high-quality decisions.

**103. However, strict specialization has several drawbacks that can reduce efficiency and quality of justice.**<sup>65</sup> There is a greater chance that specialized judges will be captured by special interests and, if this occurs, their decisions can systematically undermine the field of law. Strict judicial specialization can also create a two-tiered system where repeat court users gain an advantage<sup>66</sup> through more informal engagements which increase the risk of favoritism and corruption.<sup>67</sup> Specialization can lead to judicial tunnel-vision, in which a judge focuses on only one area of law and is unaware of relevant legal changes outside of their field.<sup>68</sup>

**104. The creation of specialist chambers or courts should be strictly regulated.** Both generalist and specialist judges and courts must continue to meet all fair trial requirements set out in Article 6 of the ECHR and provide the same safeguards and quality. Distinct procedures for specialist courts should be avoided unless they respond to the needs which led to setting up the court (e.g., specific rules for examining cases involving children). All courts should enjoy the same conditions in terms of resources, again recognizing variances that occur because of the specific purpose of the specialized court.<sup>69</sup>

## 1.9 Different Models of Specialization

**105. Across Europe, there are different types of commercial specialization.**<sup>70</sup> Some countries have separate commercial courts in each province or district while others have just one or two in the whole country. The structure of chambers in most countries is a mix of professional and lay judges who are practitioners in business.<sup>71</sup> In some countries, commercial courts' jurisdiction is limited to commercial disputes or bankruptcy (e.g., Denmark), while in others they also have competence over disputes related to industrial and intellectual property (e.g., Austria).

**106. Distinctions regarding models of specialization are important since any generalization about impacts of specialization applies more accurately to some forms of specialization than others.**<sup>72</sup> The assessment of comparator jurisdictions found three distinct specialization models based on comprehensiveness: a) a specialized court department or bench within a court of general jurisdiction; b) a specialized separate court, or c) a mixed model.

---

<sup>64</sup> CCJE Opinion No 15 assessed advantages of judge's specialization in para 8-13.

<sup>65</sup> CCJE Opinion No 15 assessed limits and dangers of judge's specialization in para 14-22.

<sup>66</sup> L. Baum, *Probing the Effects of Judicial Specialization*, Duke Law Journal 58 (2009), p.1667-84.

<sup>67</sup> High perception of corruption was a reason for abolishment of economic courts in Moldova in 2012. More in *Specialization of judges and feasibility of creating administrative courts in the Republic of Moldova*, Legal Resource Centre from Moldova, 2014.

<sup>68</sup> R.C. Dreyfuss, *Forums of the Future: the Role of Specialized Courts in Resolving Business Disputes*, Brooklyn Law Review 61, No.1, 1995, pp. 1-44.

<sup>69</sup> Para 29-36, Opinion (2012) No. 15, CCJE.

<sup>70</sup> Even in countries with only generalist judges, judges in practice tend to specialize in certain areas. See E. K. Cheng, *The Myth of the Generalist judge*, Stanford Law Review, vol. 61, 2008.

<sup>71</sup> In France, however, judges are only business people.

<sup>72</sup> L. Baum, *Probing the Effects of Judicial Specialization*, Duke Law Journal 58 (2009), pp. 1673-1675.

### 1.9.1 Specialized Departments in Courts of General Jurisdiction

**107. The most common method of specialization is through specialist chambers or departments.**<sup>73</sup> This can be achieved by means of internal court rules. In Europe, this model is increasingly used, but tends to take a more formal approach, such as through amendment of the law pertaining to courts and sometimes a change in the procedural code.<sup>74</sup>

**108. Special departments can be a highly flexible way of pursuing specialization without significantly increasing administrative effort and costs.** A specialized department of an existing court may be established with less formality than by special legislation. Depending on the legal regime, sometimes it can be done only by administrative direction or by rules adopted by the court itself.

**109. Specialized judges may work in a specialized department or unit within the court of general jurisdiction.** The division of tasks in the particular court may be invisible for the court users, as they will only be required to approach the territorially competent court, while the distribution of the cases to a “specialized” department or unit within the court is done internally, as a matter of administrative routine within that court. A court department of this kind can have several judges, staff members and courtrooms. This requires engagement of specialized staff. Judges may be allocated to a special department either indefinitely or as needed to meet temporary needs.

**110. A good example is the Companies and Business Court which is an independent section of the Court of Appeal in Amsterdam.** The cases are heard by chambers consisting of five people, three of whom are professional specialized judges. The other two have financial experience as auditors, businessmen or labor union officials, depending on the case at hand.<sup>75</sup> The experience from The Netherlands shows that having judicial assistants working together in teams can be a major advantage allowing for specialization.<sup>76</sup>

**111. Ireland has also successfully applied the model of specialized commercial departments.** Ireland’s High Court has a commercial division which hears exclusively commercial disputes of high value and all intellectual property cases. Judges in commercial cases manage the litigation and impose short deadlines, allowing the court to fast-track disputes.<sup>77</sup>

### 1.9.2 Separate Commercial Courts

**112. Separate specialized commercial courts can be part of the jurisdiction’s general court system or a separate hierarchy of courts that may include distinct specialized appeals courts.** This form of specialization requires division of work among courts, which operate as several branches of jurisdiction with separate appellate instances, eventually meeting (or not) with other branches of jurisdiction at the top level (the level of ‘supreme’ court). These

---

<sup>73</sup> CCJE Opinion No. 15, para 42.

<sup>74</sup> H. Gramckow, J. Walsh, *Developing specialized court services – International Experience and Lessons Learned*, the World Bank, 2013, p. 11.

<sup>75</sup> M. J. Kroeze, *The Companies and Business Court as Specialized Court*, <https://www.oecd.org/daf/ca/corporategovernanceprinciples/37188740.pdf>

<sup>76</sup> See for details Exploratory study on the position of: Judicial Assistants and Media Spokespersons in selected Council of Europe member states, report by Marco Fabri, September 2013, Joint Program between the European Union and the Council of Europe on „Strengthening the Court Management System in Turkey” (JP COMASYT).

<sup>77</sup> *Study on Specialized IPR Courts*, Joint project of the International Intellectual and United States Patent and Trademark Office, Property Institute and 2012, <http://iipi.org/wp-content/uploads/2012/05/Study-on-Specialized-IPR-Courts.pdf>

separate specialist courts in commercial cases are less common than other types of separate specialist courts in Europe.

**113. Specialized courts are established to better respond to differences in the procedural codes (commercial vs. civil procedural rules), or because administrative processes and internal court rules are adjusted to better address the special needs of the cases the courts handle.**<sup>78</sup> Specialization of this kind means not only that a special institution or individual will deal with this special type of case, but also that there may be differences in the ways cases are treated. If these methods are regulated and prescribed by law, they may grow into special procedural codes.

**114. Separate court structures require specialized judges and their assisting staff** (e.g., professionals with knowledge and training in specific areas).<sup>79</sup> It also assumes that users are aware they are required to address the appropriate court, facing risks that their case will otherwise be dismissed due to lack of jurisdiction, and that time will be lost transferring cases between courts.

**115. There is little evidence that establishing standalone courts improves the processing of commercial cases any more so than specialized departments within courts.** For example, many countries enforce contracts quickly without any specialization. Iceland and Lithuania (with a similar population to BiH<sup>80</sup>) do not specialize commercial cases but are still faster in enforcing contracts (417 and 300 days, respectively, versus 595 in BiH). Several Nordic countries that have strong economies do not specialize in commercial cases and have low average durations for contract enforcement.<sup>81</sup> On the other hand, Croatia (with an economy three times larger than BiH) specializes commercial cases but contract enforcement time is only marginally shorter at 572 days.<sup>82</sup>

### 1.9.3 Mixed Models

**116. Some countries have mixed models, notably Austria and Switzerland.** Often, the mixed model involves one or several specialized courts in the country's economic centers, along with specialized departments in courts of general jurisdiction in the rest of the country. For example, in Austria, only the capital, Vienna, has specialized civil courts for commercial cases.<sup>83</sup> In all other districts, commercial cases are heard by commercial departments (*Handelssenate*) within the courts of ordinary jurisdiction. In Switzerland, the Cantons of Aargau, Bern, St. Gallen and Zurich have each established a Commercial Court (*Handelsgericht*) to deal with national and international commercial disputes in the first instance. In other Cantons, courts of general jurisdiction are competent for commercial disputes.<sup>84</sup>

---

<sup>78</sup> H. Gramckow, J. Walsh, *Developing specialized court services – International Experience and Lessons Learned*, the World Bank, 2013, p. 10.

<sup>79</sup> Central European and Eurasian Law Initiative, *Specialized Courts: A Concept Paper*, 1996, p. 1.

<sup>80</sup> Iceland's GDP is also similar to that in BiH.

<sup>81</sup> For example, Norway ranks 10<sup>th</sup> on the 2016 Doing Business report at 280 days, Sweden ranks 14<sup>th</sup> at 321 days, and Finland ranks 23<sup>rd</sup> at 375 days.

<sup>82</sup> According to the latest statistical yearbook for 2015 in Croatia, where standalone commercial courts exist, the duration in commercial litigation was 324 days (288 in FBiH), while in the bankruptcy procedures 1304 days (420 in FBiH). In Republika Srpska duration in commercial litigation was 789 in 2015.

<sup>83</sup> These are the District Court for Commercial Matters (*Bezirksgericht für Handelssachen*) and the Vienna Commercial Court (*Handelsgericht Wien*), which has the status of a regional court.

<sup>84</sup> <http://www.homburger.ch/fileadmin/publications/RESCUE.pdf>

## Options for Improving Commercial Case Processing in FBiH

**117. Stakeholders agree that there are three policy options for improving commercial case management in FBiH.** The section below analyzes the constitutional, legislative, operational, and financial implications of each option. The three options are:

*Option 1: Establish separate first-instance and second-instance Commercial Court in each Canton.*

*Option 2: Establish separate first-instance courts in select Cantons and a second-instance commercial court at the level of FBiH.*

*Option 3: Reorganize and strengthen existing commercial case departments without establishing separate structures.*

### 1.10 Option 1: Establish Separate First-instance and Second-instance Commercial Courts in each Canton

<i>Option 1: Establishing a first-instance and second-instance Commercial Court in each Canton</i>	
<i>Pros</i>	<i>Cons</i>
No need to amend the Constitution(s)	Extremely high cost of implementation
Manageable legislative procedure	Lack of clarity over who will secure funds for implementation and running costs
Increased access to justice	Increase in number of employees
	Lack of facilities
	Results from countries which have established separate court structures reveal little improvement in efficiency and quality of services

#### 1.10.1 Constitutional and Legislative Implications

**118. This option would not require constitutional amendments, but would require amendments to the FBiH Law on Courts.** The FBiH Constitution allows for Municipal Courts to be established for the territory of one or more municipalities.<sup>85</sup> The Law on Courts in FBiH would require amendment to define the jurisdiction of the Municipal commercial courts.

**119. Legislative amendments would also be required in each of the ten Cantons in FBiH.** The FBiH Constitution requires that the creation of Municipal Courts is regulated by Cantonal legislation and funded from Cantonal budgets. So specialized commercial courts would need to be included in each Canton's legislation and aligned with the FBiH Constitution. This would be costly and time consuming process and would require political consensus among all ten Cantons.

<sup>85</sup> Article VI.7. The FBiH Law on Courts has a similar article, Article 16, Official Journal No. 38/05, 22/06, 63/10, 72/10, 7/13, 52/14. So there is no legal obstacle to establishing one first-instance commercial court in the territory of a whole Canton.

**120. In addition, the HJPC’s decision on the number of judges would need to be amended to include the number of judges in first-instance and second-instance commercial courts.** The decision of the Federal MOJ on the number of employees in courts would also require amendment to provide staff for the commercial courts.<sup>86</sup>

*1.10.2 Operational and Financial Implications*

**121. Establishing a first-instance and second-instance Commercial Court in each Canton is estimated to exceed 11 million BAM in the first year and 10 million BAM each year thereafter.** It is unclear whether FBiH budget or Cantonal budgets would provide funds for establishment and functioning of newly established courts. The problem of funding was highlighted during meetings with Ministries of Finance in the Cantons of Tuzla and Sarajevo, and each made it clear that their Cantonal budgets cannot bear additional costs related to establishment of commercial courts. Calculation of total costs is presented in Table 6.

**Table 6. Option 1 Calculation of Total Cost<sup>87</sup>**

	Year 1	Year 2	Year 3	Year 4
<b>Increase in the Wage Bill for Judges</b>	5,450,854.50	5,450,854.50	5,450,854.50	5,450,854.50
<b>Increase in the Wage Bill for Court Staff</b>	4,724,424.00	4,724,424.00	4,724,424.00	4,724,424.00
<b>Training Cost</b>	222,436.00	114,756.00	114,756.00	91,700.00
<b>Cost of IT Equipment</b>	748,082.44	0.00	0.00	0.00
<b>Total</b>	<b>11,145,796.94</b>	<b>10,290,034.50</b>	<b>10,290,034.50</b>	<b>10,266,978.50</b>

*Source: WB Calculation*

**122. Implementation of Option 1 would result in an increase in the total number of judges and court staff.** Based on the Law on High Judicial and Prosecutorial Council, the HJPC determines the minimum number of judges required for functioning of a court. A Municipal Court should have at least five judges and a Cantonal Court must have at least three judges.<sup>88</sup> Assuming that Sarajevo, Tuzla, Zenica and Mostar would need a larger number of judges than the others, then up to 105 judges would be required under the Option 1. If judges from the existing commercial departments are moved to the new specialized courts, the impact on the wage bill under the Option 1 would be significantly lower. However, Court Presidents consulted during the Study were adamant that they would have to hire new judges to fill positions vacated by judges who are moved to the specialized courts. In the latter case, the HJPC would need to amend the decision on the number of judges in FBiH. The fiscal impact of implementation of Option 1 on the wage bill for judges is estimated at 5.45 million BAM (see Table 7).<sup>89</sup>

<sup>86</sup> Article 42 Law on Courts

<sup>87</sup> Calculations presented in this study are based on nominal value and are not adjusted to inflation.

<sup>88</sup> This figure of five judges in Municipal Courts is not regulated by legislation, but is based on a minimum number required for a court to function and respect procedural requirements.

<sup>89</sup> The calculation presented here is conservative and does not include allowances and other elements of pay.

**Table 7. Impact of Hiring Judges on the FBiH Wage Bill<sup>90</sup>**

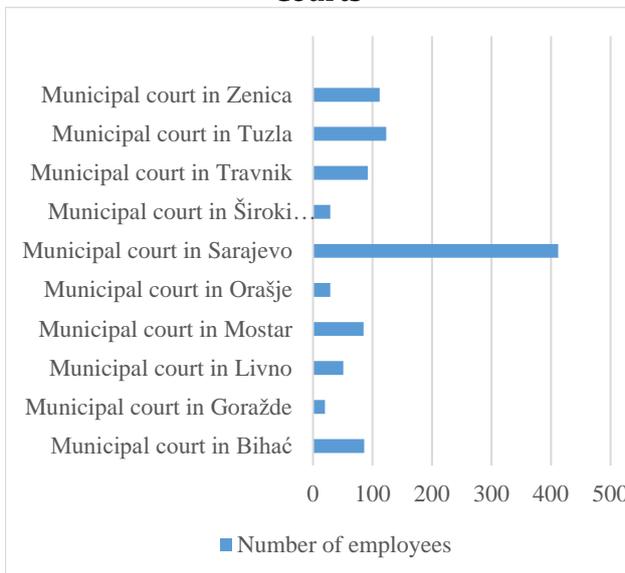
	Number of Judges	Average monthly salary in 2015 (BAM)	Increase in the Wage Bill (BAM)
<b>First Instance Commercial Courts in FBiH</b>	<b>75</b>	<b>4,037.67</b>	<b>3,633,903.00</b>
<b>Second Instance Commercial Courts in FBiH</b>	<b>30</b>	<b>5,047.09</b>	<b>1,816,951.50</b>

Source: WB Calculation

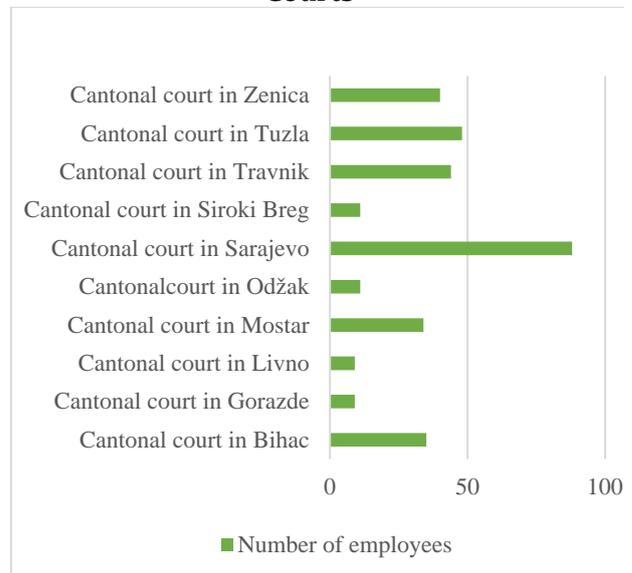
**123. However, there is insufficient work to support commercial courts in every Canton.** Cantons other than Sarajevo, Tuzla, and to a lesser extent Zenica and Mostar, do not have sufficient caseloads to justify the establishment of specialized first and second instance courts. So workloads for these judges would be far below the standards of the Framework Criteria.

**124. Court staffing would also need to increase.** The most recent Rulebook for determining the number of court staff in FBiH, from 2003, stipulates that the ratio of staff to judges in Municipal Courts should be 3:1 while in Cantonal Courts it should be 2.5:1.<sup>91</sup> In practice, according to the 2015 HJPC report, in Municipal Courts the ratio of staff to judges was 3.5:1, approximately 17 percent above the norm.<sup>92</sup> In Cantonal Courts, the overall ratio of staff to judges is 2.5:1, in accordance with the norm. However, in those Cantonal Courts that have commercial departments, the ratio is lower than the norm, at 2.24:1. The norms were used to calculate the fiscal impact on the wage bill for court staff. The difference in ratios between the Cantonal Courts and Municipal Courts is presented in Tables 8 and 9. The ratios in Cantonal Courts and Municipal Courts that have commercial departments is shown in the Figure 11 and Figure 12 below.

**Figure 11. Employees in FBiH Municipal Courts**



**Figure 12. Employees in FBiH Cantonal Courts**



Source: HJPC 2015 Annual Report

<sup>90</sup> The calculation is based on gross wages of judges according to the Law on Wages of Judges and Prosecutors in FBiH.

<sup>91</sup> Article 2 of the Rulebook on Criteria for Determining Number of Court Staff in Courts in FBiH. Each Court President prepares a systematization act which determines the number of positions and number of employees in a given court. This act is approved by the Federal MOJ and shared with the HJPC for information.

<sup>92</sup> Page 28, HJPC Annual Report 2015

**Table 8. Ratio of Court Staff to Judges in Cantonal Courts in FBiH, 2016**

	<b>Judges Employed On April 1, 2016</b>	<b>Number of court staff</b>	<b>Court Staff to Judges ratio</b>
Cantonal Court in Bihać	17	35	2.06
Cantonal Court in Odžak	3	11	3.67
Cantonal Court in Tuzla	26	48	1.85
Cantonal Court in Zenica	19	40	2.11
Cantonal Court in Goražde	4	9	2.25
Cantonal Court in N. Travnik	14	44	3.14
Cantonal Court in Mostar	16	34	2.13
Cantonal Court in Š. Brijeg	5	11	2.20
Cantonal Court in Sarajevo	38	88	2.32
Cantonal Court in Livno	5	9	1.80
<b>TOTAL</b>	<b>147</b>	<b>329</b>	<b>2.24</b>

Source: WB Calculation

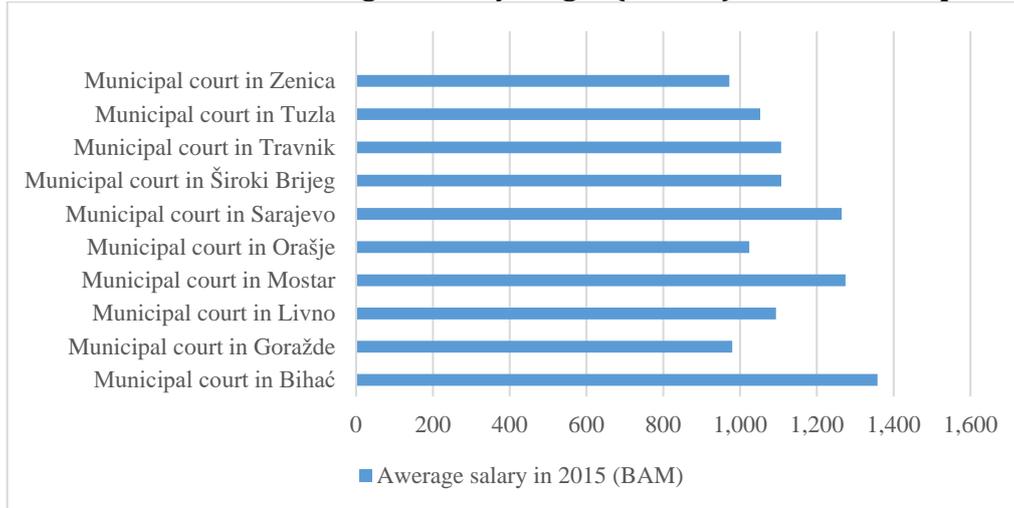
**Table 9. Ratio of Court Staff to Judges in Municipal Courts in FBiH, 2016**

	<b>Judges Employed on April 2016</b>	<b>Number of court staff</b>	<b>Court Staff to Judges ratio</b>
Municipal Court in Bihać	23	86	3.74
Municipal Court in Orašje	9	29	3.22
Municipal Court in Tuzla	44	123	2.80
Municipal Court in Zenica	30	112	3.73
Municipal Court in Goražde	7	20	2.86
Municipal Court in Travnik	25	92	3.68
Municipal Court in Mostar	22	85	3.86
Municipal Court in Široki Brijeg	9	29	3.22
Municipal Court in Sarajevo	110	412	3.75
Municipal Court in Livno	15	51	3.40
<b>TOTAL</b>	<b>294</b>	<b>1039</b>	<b>3.53</b>

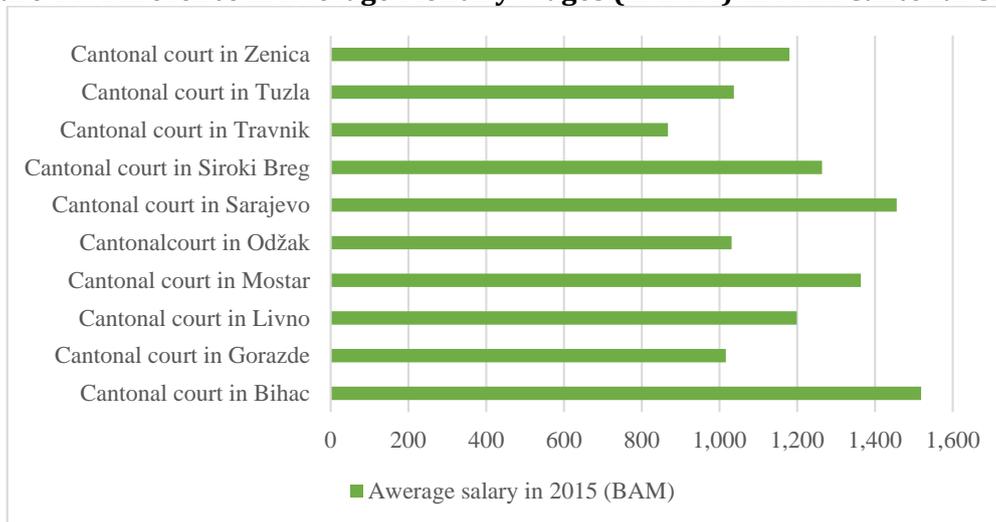
Source: WB Calculation

**125. The average monthly wage of court staff in Cantonal Courts with commercial departments is 1,193 BAM, while in Municipal Courts it is 1,123 BAM.** Court staff are hired as civil servants by Cantonal governments and their wages vary significantly. Wages of court staff in cantons are regulated by different wage bill laws. The difference in wages of court staff in Municipal Courts and Cantonal Courts are shown in Figures 13 and 14.

**Figure 13. Difference in Average Monthly Wages (in BAM) in FBiH Municipal Courts**



**Figure 14. Difference in Average Monthly Wages (in BAM) in FBiH Cantonal Courts**



Source: WB Calculation based on information provided by HJPC

**126. The impact on the wage bill for court staff is estimated to exceed 4.72 million BAM per annum.**<sup>93</sup> Based on the calculation of average wages and ratios of court staff to judges, the team assesses that specialized commercial courts under Option 1 would require the hiring of an additional 266 staff in first-instance courts and 68 staff in second-instance courts.

**Table 10. Additional Court Staff for Specialized Commercial Courts in FBiH**

	Number of Court Staff	Average monthly salary in 2015	Increase in the Wage Bill
<b>First Instance Commercial Courts in FBiH</b>	<b>266</b>	<b>1,193.00</b>	<b>3,808,056.00</b>
<b>Second Instance Commercial Courts in FBiH</b>	<b>68</b>	<b>1,123.00</b>	<b>916,368.00</b>

Source: WB Calculation

<sup>93</sup> The estimations presented here are conservative and do not include allowances and other elements of pay.

**127. There would also be infrastructure costs, as there is little available space in existing courts to house these new courts.** In some Cantons, there are available facilities, but facilities would require renovation. Another option would be to rent office space, however this would be difficult in smaller Cantons. The Study was unable to assess the total amount of office space required, but price ranges indicate that this would be costly (see Table 11).

**Table 11. Price (in BAM) of Office Lease in FBiH**

Location	Range of price/m <sup>2</sup>	Average price/m <sup>2</sup>
Bihać	8-22	14
Mostar	7-20	13
Sarajevo	12-22	16
Tuzla	13-35	19
Zenica	29	29

*Source: WB Calculation*

**128. These new personnel would require training.** All newly appointed judges should carry out eight days of introductory training during their first year, as specified by the CJPT Induction and Professional Development Training Program for 2016. In addition, induction training for legal associates and advisors takes place in 12 two-day modules over the course of three years. An estimated 131,000 BAM would be needed for induction training, plus 92,000 BAM for specialized training for the additional 105 judges and 21 legal associates in the first year of new specialized courts, and then 92,000 BAM every year for their continuous development (Table 12 presents these calculations). For the induction training for legal associates and advisors, an additional 23,000 BAM would be required in the second and third year of operation. These minimum training costs are based on the assumption that the new judges and staff will participate in the training program as prescribed by the CJPT Training Program and that an additional five days of specialized training will be provided to strengthen their capacity in commercial matters. To improve the pedagogic effects of the training, testing of knowledge and skills acquired (in a form of case study) should be organized for both induction and specialized courses.

**Table 12. Option 1: Cost of Training Additional Judges and Legal Associates**

	Induction <b>Training</b>	Specialized trainings		
	Judges	Legal <b>associates</b>	Judges	Legal <b>associates</b>
Total number of training participants	105	21	105	21
Total training days per <b>trainee</b>	8	8	5	5
Number of trainings/participant	4	4	2	2
Training duration (days)	2	2	2.5	2.5
Number of training groups (up to 25 trainees per group)	4	1	4	1
Trainers' fee	12800	3200	8000	2500
Training Manuals	0	0	5000	5000
Training Certification (design and evaluation of final tests in a form of case study)	1600	400	1600	400
Renting training room	16000	4000	10000	2500
Training refreshments	25200	5040	15750	3150
Hotel accommodation per person (half-board, tourist tax included)	43680	8736	27300	5460
<b>Travel costs of training participants (30 BAM round trip/participant)</b>	<b>8400</b>	<b>1680</b>	<b>4200</b>	<b>840</b>
<b>Sub-total</b>	<b>107680</b>	<b>23056</b>	<b>71850</b>	<b>19850</b>

Source: WB Calculation

**129. Acquisition of new ICT equipment would be necessary in order to maintain existing ratios of equipment to staff.** Table 13 shows the existing ICT resources (e.g., computers, printers, and scanners) in Municipal and Cantonal Courts.

**Table 13. Existing ICT Equipment in FBiH Courts**

<b>Court</b>	<b>Total Judges and staff</b>	<b>Total desktop and laptop computers</b>	<b>Ratio of computers to staff</b>	<b>Total printers</b>	<b>Ratio of printers to staff</b>	<b>Total scanners</b>	<b>Ratio of scanners to 10 staff</b>
Municipal court in Bihać	109	134	1	70	1	3	0.3
Municipal court in Goražde	30	27	1	20	1	3	1.0
Municipal court in Livno	66	78	1	58	1	4	0.6
Municipal court in Mostar	107	139	1	86	1	15	1.4
Municipal court in Orašje	38	42	1	27	1	3	0.8
Municipal court in Sarajevo	522	529	1	355	1	13	0.2
Municipal court in Široki Brijeg	38	45	1	24	1	1	0.3
Municipal court in Travnik	117	138	1	128	1	5	0.4
Municipal court in Tuzla	167	165	1	69	0	9	0.5
Municipal court in Zenica	142	147	1	72	1	6	0.4
<b>Sub-total</b>	<b>1336</b>	<b>1444</b>	<b>1</b>	<b>909</b>	<b>1</b>	<b>62</b>	<b>0.5</b>
Cantonal court in Bihać	52	77	1	31	1	2	0.4
Cantonal court in Goražde	13	18	1	24	2	1	0.8
Cantonal court in Livno	14	30	2	20	1	1	0.7
Cantonal court in Mostar	50	73	1	38	1	2	0.4
Cantonal court in Odžak	14	21	2	14	1	1	0.7
Cantonal court in Sarajevo	126	134	1	126	1	3	0.2
Cantonal court in Široki Brijeg	16	23	1	13	1	1	0.6
Cantonal court in Novi Travnik	49	75	2	44	1	3	0.6
Cantonal court in Tuzla	74	62	1	49	1	3	0.4
Cantonal court in Zenica	59	85	1	42	1	2	0.3
<b>Sub-total</b>	<b>467</b>	<b>598</b>	<b>1</b>	<b>401</b>	<b>1</b>	<b>19</b>	<b>0.4</b>
<b>TOTAL</b>	<b>1803</b>	<b>2042</b>	<b>1</b>	<b>1310</b>	<b>1</b>	<b>81</b>	<b>0.4</b>

Source: HJPC

**130. Investment in ICT under Option 1 is estimated at 750,000 BAM, as presented in the Table 14 below.** This would include procurement of computers with operating systems, monitors, UPSs, and printers for all additional 439 judges and staff and at least 18 scanners.<sup>94</sup>

**Table 14. Option 1 Investment in ICT Equipment**

	Number of Additional Judges and Court Staff	Desk-top computer with OS	Monitor	UPS	Printer	Scanner	Total Investment in BAM
<b>Average market price in FBiH</b>		<b>643</b>	<b>457</b>	<b>267</b>	<b>326</b>	<b>296</b>	
1st Instance Commercial Courts in FBiH	341	341	341	341	341	14	581084.54
2nd Instance Commercial Courts in FBiH	98	98	98	98	98	4	166997.90
<b>Total</b>	<b>439</b>	<b>439</b>	<b>439</b>	<b>439</b>	<b>439</b>	<b>18</b>	<b>748082.44</b>

Source: WB Calculation

**131. Such a significant reform also carries a range of transaction costs.** Experience from other jurisdictions shows that productivity and efficiency in a court decreases from the moment that a transfer of competence is announced to when it is executed, which is often more than one year. In addition, new courts would need time to focus on organizational and logistical issues before becoming fully functional. Commercial case files would also need to be physically transferred and cases reallocated among judges and staff.

### 1.11 Option 2: Establish Separate First-instance Courts in Selected Cantons and a Second-instance Commercial Court at FBiH level

Option 2: Establishing first-instance courts in selected Cantons and a second-instance commercial court at the level of FBiH	
<i>Pros</i>	<i>Cons</i>
The workload would be equally distributed	Requires Constitutional amendments
Unification of court practice	Option 2 would likely be as expensive as Option 1
	Challenges of cost-sharing and personnel-sharing between Cantons
	Little evidence that this will contribute to better efficiency or quality of court decisions

<sup>94</sup> This estimation is based on the current ratios of judges and staff to it devices in Cantonal Courts (0.04 for scanners and 1 for all other devices) and the average market price of ICT equipment in FBiH.

### 1.11.1 Constitutional and Legislative Implications

**132. Option 2 requires Constitutional and legislative amendments.** The FBiH Constitution does not recognize the possibility of transferring competence from one Canton to another.<sup>95</sup> Therefore, amendment to the FBiH Constitution would be required to establish Cantonal commercial courts competent for several Cantons, along with amendments to the Law on Courts. Constitutional amendments would also be required to establish a second-instance commercial court at the Federation level.<sup>96</sup>

**133. To avoid further Constitutional amendments, a second-instance commercial court could be established as a special department of the Supreme Court of FBiH.** However, experience with the 2014 Law on Suppression of Corruption and Organized Crime demonstrated that this is not easy. That law envisaged a new department within the Federal Prosecutor Office and FBiH Supreme Court, but a lack of resources caused several postponements in implementation and this department is still not operational. The Administration for Management of Seizure Assets is facing similar challenges in operation.

### 1.11.2 Operational and Financial Implications

**134. Establishing first-instance courts in selected Cantons and a second-instance Commercial Court at the level of FBiH is costly.** Based on the number and location of incoming cases, Option 2 would require up to 4 first-instance commercial courts in FBiH (in Sarajevo, Tuzla, Zenica and Mostar). If newly established courts are staffed with new judges and staff, total cost is estimated to be 10.5 million BAM in the first year and 9.7 million every year thereafter. In case that judges and staff are transferred to new courts and vacant positions in the courts of general jurisdictional are not filled, the estimate is 4.3 million BAM in first year and 4 million every year thereafter (see Table 15).

**Table 15. Option 2 Calculation of Total Cost**

	Based on hiring new judges and new staff				Based on transfer of existing judges and staff			
	Year 1	Year 2	Year 3	Year 4	Year 1	Year 2	Year 3	Year 4
<b>Increase in the Wage Bill for Judges</b>	5,208,594.30	5,208,594.30	5,208,594.30	5,208,594.30	2,398,375.98	2,398,375.98	2,398,375.98	2,398,375.98
<b>Increase in the Wage Bill for Court Staff</b>	4,443,070.80	4,443,070.80	4,443,070.80	4,443,070.80	1,512,012.96	1,512,012.96	1,512,012.96	1,512,012.96
<b>Training Cost</b>	214,820.00	110,820.00	110,820.00	88,500.00	148,836.00	102,724.00	102,724.00	88,500.00
<b>Cost of IT Equipment</b>	705,480.94	0.00	0.00	0.00	257,313.10	0.00	0.00	0.00
<b>Total</b>	<b>10,571,966.04</b>	<b>9,762,485.10</b>	<b>9,762,485.10</b>	<b>9,740,165.10</b>	<b>4,316,538.04</b>	<b>4,013,112.94</b>	<b>4,013,112.94</b>	<b>3,998,888.94</b>

Source: WB Calculation

<sup>95</sup> Article V.2 of the Constitution recognize possibility to transfer Cantonal competence to municipality or town at own territory or to federal Government.

<sup>96</sup> Article C.1 states the judicial functions in the Federation shall be exercised by the courts specified in the Constitution itself. Currently, the only courts at the level of the Federation are the Constitutional Court and the Supreme Court.

**135. The Federation and the various Cantons would need to develop a cost-sharing arrangement to finance this expense, which is theoretically possible but unlikely.** Such cost-sharing arrangements have been attempted in FBiH in the past, but each time have broken down. For example, in the health sector, several Cantonal ministries of health had agreed to share the costs of a tertiary medical center, noting that such a facility provides an essential life-saving service but is not needed in every Canton. Although an agreement was reached, not all Cantons have contributed their allocations and the center has accumulated large arrears that impact service delivery. Following consultations with a number of ministries of finance at Cantonal level, the team concludes that such an arrangement is not feasible in the case of commercial courts.

**136. Assuming the challenges above could be overcome, the fiscal impact of implementation of Option 2 on the wage bill for judges is estimated at between 2.4 and 5.2 million BAM.** The calculation depends on whether the four newly established courts would be staffed with new judges or judges who are already working on commercial cases will transfer to new courts.<sup>97</sup> The Study concludes that it is highly unlikely that judges and staff would transfer. Such transfers would require extensive coordination among HJPC, the MOJs and MOFs of Cantons and Court Presidents. Court Presidents, in particular, would likely resist the transfer or would fill the resulting vacancies. Furthermore, the decision on precisely which judges and staff should transfer is not straightforward because HJPC data does not readily distinguish between judges who work exclusively on commercial cases and judges who may work on only one commercial case per year. This option would also require amendment to the HJPC's decision on the number of judges in FBiH. The impact of implementation of Option 2 under both scenarios is presented in Table 16.

---

<sup>97</sup> Based on the anticipated workload, the first-instance Commercial Court in Sarajevo would have 25 judges, Tuzla would have 20, Zenica would have 15 and Mostar up to 10 judges who would work exclusively on commercial cases. However, if vacant positions are filled by judges from the Commercial Departments in existing courts, the first-instance commercial court in Sarajevo would then need to recruit only 7 new judges, Mostar and Tuzla would need additional 2, while Zenica would have to hire 1 more judge. The second-instance commercial court at the level of the FBiH would employ up to 30 judges. In this scenario, the impact on the wage bill is approximately 2.4 million BAM.

**Table 16. Option 2 Impact of Hiring Judges on FBiH Wage Bill<sup>98</sup>**

	Number of Judges	Average monthly salary in 2015	Additional Judges to be Hired	Increase in the Wage Bill (all new judges)	Increase in the Wage Bill (transfer of existing judges)
1st Instance Commercial Court in Mostar	10	4,037.67	2	484,520.40	96,904.08
1st Instance Commercial Court in Sarajevo	25	4,037.67	7	1,211,301.00	339,164.28
1st Instance Commercial Court in Tuzla	20	4,037.67	2	969,040.80	96,904.08
1st Instance Commercial Court in Zenica	15	4,037.67	1	726,780.60	48,452.04
<b>TOTAL for 1st Instance Courts</b>	<b>70</b>	<b>4,037.67</b>	<b>12</b>	<b>3,391,642.80</b>	<b>581,424.48</b>
2nd Instance (Appellate) court in FBiH	30	5,047.09	30	1,816,951.50	1,816,951.50
<b>TOTAL for 2nd Instance Court</b>	<b>30</b>	<b>5,047.09</b>	<b>30</b>	<b>1,816,951.50</b>	<b>1,816,951.50</b>
<b>TOTAL</b>				<b>5,208,594.30</b>	<b>2,398,375.98</b>

Source: WB Calculation

**137. Under Option 2, the impact on the wage bill for court staff is estimated at between 1.5 and 4.4 million BAM.<sup>99</sup>** Using the same calculation for court staff as for Option 1, the implementation of Option 2 would require hiring of additional 247 staff in the first-instance courts and 67 staff in the second-instance court. In case that court staff already working on commercial cases are transferred to new courts additional 42 staff in first-instance court would be required. Calculations are presented in Table 17.

**Table 17. Option 2 Impact of Additional Court Staff on FBiH Wage Bill**

	Number of Court Staff		Average monthly salary in 2015	Increase in the Wage Bill	
	Based on hiring new judges and new staff	Based on transfer of existing judges and staff		Based on 70 new judges	Based on additional 12 judges
1 <sup>st</sup> Instance Commercial Courts in FBiH	247	42	1,193.00	3,537,483.60	606,425.76
2 <sup>nd</sup> Instance Commercial Courts in FBiH	67	67	1,123.00	905,587.20	905,587.20

Source: WB Calculation

**138. Investment in ICT under Option 2 is estimated between 250,000 to 700,000 BAM, pending on whether ICT will be purchased for all new employees or just for additional judges and court staff.** This includes procurement of computers with operating systems, monitors, uninterruptible power supply (UPSs), and printers for all additional 414 judges and staff together with 17 scanners under the first alternative. Under the second alternative this

<sup>98</sup> The calculation is based on gross wages of judges according to the Law on Wages of Judges and Prosecutors in FBiH. The calculation presented here is conservative and does not include allowances and other elements of pay.

<sup>99</sup> The calculation presented here is conservative and does not include allowances and other elements of pay.

includes procurement of ICT equipment for 151 additional judges and staff and 6 scanners. As with Option 1, this estimation is based on current average ratios of judges and staff to ICT devices and the average market price of equipment in FBiH.

**Table 18. Option 2 Investment in ICT equipment**

Based on hiring new judges and new staff							Based on transfer of existing judges and staff						
Number of Judges and Court Staff	Desk-top computer with OS	Monitor	UPS	Printer	Scanner	Total Investment in BAM	Number of Judges and Court Staff	Desk-top computer with OS	Monitor	UPS	Printer	Scanner	Total Investment in BAM
Price per unit (BAM)	643	457	267	326	296			643	457	267	326	296	
317	317	317	317	317	13	540,187.10	54	54	54	54	54	2	92,019.25
97	97	97	97	97	4	165,293.84	97	97	97	97	97	4	165,293.84
<b>414</b>	<b>414</b>	<b>414</b>	<b>414</b>	<b>414</b>	<b>17</b>	<b>705,480.94</b>		<b>151</b>	<b>151</b>	<b>151</b>	<b>151</b>	<b>6</b>	<b>257,313.10</b>

Source: WB Calculation

**139. Implementation of Option 2 would also require the renovation of existing facilities or leasing of new facilities.** Prices for leased office space range from 13 BAM/m<sup>2</sup> in Mostar to 29 BAM/m<sup>2</sup> in Sarajevo.

**140. Investment in training an additional 100 judges and 20 legal associates in the first year of new specialized courts would exceed 200,000 BAM, and additional 88,500 BAM would be required annually for their continued professional development.**<sup>100</sup> If 42 judges and nine legal associates are hired, in the first year of specialization courts would need 150,000 BAM. An additional 88,500 BAM would be required for continuous professional development. Implementation of the remaining eight modules of CJPT induction training for 20 legal associates would require additional 45,000 BAM, while for nine legal associates would require 28,500 BAM. This estimate is based on the same training requirements outlined in Option 1 and are presented in the Table 19 below.

<sup>100</sup> Ratio of 0.2 legal associates to judge. The HJPC does not apply specific ratio to determine number of legal associates. Legal associates are appointed based on number of cases in specific court which are in their competence.

**Table 19. Option 2 Cost of Training Additional Judges and Legal Associates**

	Based on hiring new judges and new staff				Based on transfer of existing judges and staff			
	Induction Training		Specialized trainings		Induction Training		Specialized trainings (for all judges and legal associates)	
	Judges	Legal associates	Judges	Legal associates	Judges	Legal associates	Judges	Legal associates
<b>Total number of training participants</b>	100	20	100	20	42	9	100	20
<b>Total training days per trainee</b>	8	8	5	5	8	8	5	5
Number of trainings/participant	4	4	2	2	4	4	2	2
Training duration (days)	2	2	2.5	2.5	2	2	2.5	2.5
Number of training groups (up to 25 trainees per group)	4	1	4	1	2	1	4	1
<b>Trainers' fee</b>	12,800	3,200	8,000	2,000	6,400	3,200	8,000	2,000
<b>Training Manuals</b>	0	0	5,000	5,000	0	0	5,000	5,000
<b>Training Certification (design and evaluation of final tests in a form of case study)</b>	1,600	400	1,600	400	800	400	1,600	400
<b>Renting training room</b>	16,000	4,000	10,000	2,500	8,000	4,000	10,000	2,500
<b>Training refreshments</b>	24,000	4,800	15,000	3,000	10,080	2,160	15,000	3,000
<b>Hotel accommodation per person (half-board, tourist tax included)</b>	41,600	8,320	26,000	5,200	17,472	3,744	26,000	5,200
<b>Travel costs of training participants (30 BAM round trip/participant)</b>	8,000	1,600	4,000	800	3,360	720	4,000	800
<b>Sub-total</b>	<b>104,000</b>	<b>22,320</b>	<b>69,600</b>	<b>18,900</b>	<b>46,112</b>	<b>14,224</b>	<b>69,600</b>	<b>18,900</b>
<b>TOTAL</b>	<b>126,320</b>		<b>88,500</b>		<b>60,336</b>		<b>88,500</b>	

Source: WB Calculation

## 1.12 Option 3: Reorganize and Strengthen Existing Commercial Departments without Establishing Separate Structures

Option 3: Reorganize and strengthen existing commercial case departments without establishing specialized commercial courts	
<i>Pros</i>	<i>Cons</i>
No major changes in legislation required	Procedural laws should be amended to ensure equal distribution and transfer of cases
Medium-term expenditure for implementation of this option is manageable	Specialization will require development of extensive training program
Judges support this option	

### 1.12.1 Constitutional and Legislative Implications

**141. Option 3 would not require constitutional amendments.** The Law on Courts in the FBiH regulates commercial departments within Municipal Courts and their territorial and material competence.<sup>101</sup> In addition, the Court Rulebook allows courts to establish court departments where three or more judges can decide on matters within the same or related legal fields.

**142. Amendments to laws and bylaws to ensure the specialization of judges in commercial departments should be considered.** According to the Court Rulebook the Court President adopts the annual schedule of judges and judicial assistants, associates and advisers.<sup>102</sup>

### 1.12.2 Operational and Financial Implications

**143. Reorganizing and strengthening existing commercial case departments would require an investment of 1.65 million BAM in the first year and up to 4 million BAM in Year 4.** Four year financial projections are presented in Table 20.

**Table 20. Option 3 Total Cost for Phased Hiring 40 Judges**

	Year 1	Year 2	Year 3	Year 4
<b>Increase in the Wage Bill for Judges</b>	726,780.60	1,453,561.20	1,938,081.60	1,938,081.60
<b>Increase in the Wage Bill for Court Staff</b>	758,032.20	1,516,064.40	2,021,419.20	2,021,419.20
<b>Training Cost</b>	46,448.00	69,256.00	84,464.00	56,016.00
<b>Cost of IT Equipment</b>	115,876.10	115,876.10	76,682.71	0.00
<b>Total</b>	<b>1,647,136.90</b>	<b>3,154,757.70</b>	<b>4,120,647.51</b>	<b>4,015,516.80</b>

Source: WB Calculation

<sup>101</sup> Article 23 Law on Courts.

<sup>102</sup> Article 25 Court Rulebook.

**144. The impact on the wage bill would be more manageable than under Options 1 or 2.** The HJPC has estimated that an additional 79 judges would be required, all other things being equal, to deal with the incoming cases and to support backlog reduction (see Table 21).<sup>103</sup> The analysis assumes that procedures and practices in managing the commercial caseload would remain as they have been in the past, including with the various problems identified in the analysis above.

**Table 21. HJPC Estimate of Judges to Manage Commercial Caseloads**

Case phase	2013 influx	2014 influx	2015 influx	Average influx	Average annual quota	Number of judges required to tackle influx
Ip	5,605	5,105	5,118	5,276	876	6.0
Ip kom	1,467	2,340	3,358	2,388	1,641	1.5
Mals	6,024	4,193	4,011	4,743	758	6.3
Mals Kom	5,559	5,585	5,062	5,402	775	7.0
L	1,128	1,104	1,211	1,148	455	2.5
Mo			71	71	946	0.1
Mož			20	20	590	0
Mpom	6	3	8	6	1,210	0
Pom	3	3	3	3	1,210	0
Ps	5,930	5,223	4,724	5,292	576	9.2
Pvl	41	33	44	39	165	0.2
Pvlž	13	9	7	10	132	0.1
Pž	2,627	2,945	2,931	2,834	227	12.5
Pžip	329	434	329	364	225	1.6
R	6	23	26	18	484	0
Rev	339	339	311	330	163	2
St	364	388	491	414	101	4.1
Reg	11,068	11,204	11,963	11,412	660	17.3
Regz	20,977	22,588	21,998	21,854	2,640	8.3
F1, F2, F3	14	24	20	19	726	0
<b>TOTAL</b>	<b>61,500</b>	<b>61,543</b>	<b>61,706</b>	<b>61,583</b>		<b>78.7</b>

Source: The HJPC Caseload Analysis 2016

**145. Rather than 79 judges, the Study assesses that up to 40 new judges may be needed, together with a package of reforms to improve case management.** Based on the analysis in the previous sections, reforms in case management have the ability to produce more significant improvements in performance than adding more judges to the same system. Reforms are likely to have the greatest impacts in the areas of business registration, enforcement small claims and bankruptcy. Procedural reforms can also ease bottlenecks in case processing, as outlined above. Greater delegations of cases between judges and courts should also be investigated to build more flexibility into the system for distributing caseloads.

<sup>103</sup> The criteria on which the calculation is based include the average influx of these cases for the period 2013 – 2015, and the average annual indicative quota according to the manners of disposition in the period 2013 – 2015.

**146. Also, it should be noted that it is neither feasible nor desirable to hire 80 judges in the short term in FBiH.** Given the relatively small size of FBiH labor market and the requirements for appointment as a judge, it is not possible to attract a sufficient number of high-quality candidates. Such a reform would likely undermine the aims of improving quality and efficiency in dealing with these cases.

**147. The appointment of up to 40 new judges should be phased over four years.** First, courts should encourage existing judges to move to commercial departments within the same court. Under this Option, transfers would be easier to manage because many of them could be internal transfers from within the same court. Efforts should focus on courts where case demand is highest. After transfers have been exhausted, the Bank estimates that up to 15 judges may be required in 2017, another 15 in 2018, and the remaining 10 would be recruited in 2019. Further analysis is needed to determine precise numbers of judges to be appointed in each location. This phased approach would also enable the HJPC to monitor results before further resources are invested. The impact on the wage bill of this approach is presented in the Table 23.

**Table 23. Option 3 Impact of Phrased Hiring of 40 Judges on the FBiH Wage Bill<sup>104</sup>**

	Number of Judges	Average monthly salary in 2015	Increase in the Wage Bill in 2017	Increase in the Wage Bill in 2018	Increase in the Wage Bill in 2019	Total Increase in the Wage Bill for period 2017-2019
<b>First Instance Commercial Courts In FBiH</b>	40	4,037.67	726,780.60	1,453,562.20	1,938,082.60	4,118,425.40

*Source: WB Calculation*

**148. Under Option 3 an additional 141 staff would be required at a total cost of 2 million BAM.<sup>105</sup>** Before hiring new staff, Court Presidents should identify those staff who are willing to transfer to commercial departments.

**Table 24. Option 3 Impact of Additional Court Staff on the FBiH Wage Bill**

	Number of Court Staff	Average monthly salary in 2015	Increase in the Wage Bill
<b>First Instance Commercial Courts in FBiH</b>	141	1,193.00	2,021,419.2

*Source: WB Calculation*

**149. Option 3 would require investment in ICT equipment of approximately 300,000 BAM.** This includes procurement of computers with operating systems, monitors, UPSs, and printers for all additional 181 judges and staff, and 7 scanners, as shown in the Table 27. As with the other options, this estimation is based on current average ratios of judges and staff to it devices and the average market price of equipment in FBiH.

<sup>104</sup> The calculation is based on gross wages of judges according to the Law on Wages of Judges and Prosecutors in FBiH.

<sup>105</sup> The calculation presented here is conservative and does not include allowances and other elements of pay.

**Table 25. Option 3 Investment in ICT equipment**

	<b>Number of Additional Judges and Court Staff</b>	<b>Desk-top computer with OS</b>	<b>Monitor</b>	<b>UPS</b>	<b>Printer</b>	<b>Scanner</b>	<b>Total Investment in BAM</b>
Average market price in FBiH		643	457	267	326	296	
1st Instance Commercial Courts in FBiH	181	181	181	181	181	7	308,434.90
<b>Total</b>	<b>181</b>	<b>181</b>	<b>181</b>	<b>181</b>	<b>181</b>	<b>7</b>	<b>308,434.90</b>

*Source: WB Calculation*

**150. Option 3 would require a total investment of 260,000 BAM for induction and specialized training program for the first 4 years.** An investment of 46,500 BAM for training additional judges and legal associates in year one, 69,000 BAM in the year two, additional 84,500 BAM in the year 3 and 56,000 BAM in year 4. Additional 36,400 BAM will be required for the continuous development each year thereafter. See Table 26.

**Table 26. Option 3 Cost of Training Additional Judges and Legal Associates**

	Induction Training		Induction Training		Specialized Trainings for additional Judges and Legal Associates	Specialized Trainings for additional Judges and Legal Associates	Specialized Trainings for additional Judges and Legal Associates
	Judges	Legal associates	Judges	Legal associates			
<b>Total number of training participants</b>	15	3	10	2	18	36	48
<b>Total training days per trainee</b>	8	8	8	8	5	5	5
Number of trainings/participant	4	4	4	4	2	2	2
Training duration (days)	2	2	2	2	2.5	2.5	2.5
Number of training groups (up to 25 trainees per group)	1	1	1	1	1	2	2
<b>Trainers' fee</b>	3,200	3,200	3,200	3,200	2,000	4,000	4,000
<b>Training Manuals</b>	0	0	0	0	5,000	5,000	5,000
<b>Training Certification (design and evaluation of final tests in a form of case study)</b>	400	400	400	400	400	800	800
<b>Renting training room</b>	4,000	4,000	4,000	4,000	2,500	5,000	5,000
<b>Training refreshments</b>	3,600	720	2,400	480	2,700	5,400	7,200
<b>Hotel accommodation per person (half-board, tourist tax included)</b>	6,240	1,248	4,160	832	4,680	9,360	12,480
<b>Travel costs of training participants (30 BAM round trip/participant)</b>	1,200	240	800	160	720	1,440	1,920
<b>Sub-total</b>	<b>18,640</b>	<b>9,808</b>	<b>14,960</b>	<b>9,072</b>	<b>18,000</b>	<b>31,000</b>	<b>36,400</b>
<b>TOTAL</b>		<b>28,448</b>		<b>24,032</b>			

Source: WB Calculation

**151. A more systematic approach to training is needed.** Option 3 would require the development of a Training Needs Assessment (TNA) to outline additional specialized trainings for both judges and court staff. The TNA should map a program of continuous professional development for employees in commercial departments and focus on the skills and management of commercial cases. The TNA will look at the existing training program delivered through the CJPT and other training programs for commercial court judges available in the region. The TNA should be prepared by an external partner in cooperation with the HJPC and CJPT. Based on the Bank's experience with similar assignments in other countries, a TNA would cost approximately

200,000 BAM and take six months. Consideration should also be given to requiring all judges in commercial departments to participate in training and become accredited. Accreditation could then feed the algorithm for random case assignment in the CMS.

**152. Placing additional judges and court staff in existing commercial cases departments would require either renovating available facilities or renting offices, as there is no available space in the existing courts.** Renting office space would be very difficult in some smaller Cantons and municipalities and also expensive due to high costs of leasing office space.

## Conclusions on Feasibility of Improving Commercial Case Processing

**153. Below is a brief summary of the implications of each option and an assessment of its feasibility.** The study concludes that Option 1 and 2 are not feasible and that Option 3 is feasible.

**154. Option 1 - Establishing first-instance and second-instance Commercial Courts in each Canton - is not a feasible solution for FBiH.** No constitutional amendment would be required. However, this option would require extensive legislative amendments at the Federal level and in each Canton. Operationally, the intensity of effort needed to implement this option in a Federation of just over 2 million people is not warranted. Dozens of courts would need to be created, and an additional 300+ judges and staff hired, along with intensive investments in ICT and infrastructure. There is not sufficient workload to justify the effort required. Financially, this option is neither viable nor sustainable. The fiscal impact on the wage bill for judges is estimated at 5.45 million BAM and for court staff at 4.72 million BAM. Significant funding would also be required to build new courts or lease office space. These investments are beyond the capacity of the Federal and various Cantonal budgets to absorb. Court expenditure in BiH is already higher than EU and CEPEJ averages, at approximately 0.85 percent of GDP, which suggests that stakeholders should select an option offering better value for money. Furthermore, lessons from comparator states show little evidence that the establishment of separate commercial courts would ensure significantly better efficiency and quality of commercial case processing. Finally, none of the justice sector stakeholders interviewed for this feasibility study advocated for Option 1, so significant reform effort and change management would be required to generate the political will to ensure its implementation.

**155. Option 2 - Establishing first-instance courts in selected Cantons and a second-instance commercial court at the level of FBiH - is also not a feasible solution for FBiH.** This option would require Constitutional amendments, which is a difficult and protracted process. Option 2 would also require legislative amendments at the Federal and Cantonal levels. Operationally, this Option requires close and continued coordination, cost-sharing and personnel-sharing among the Cantons. This has failed in FBiH in the past and is unlikely to succeed in this case. Financially, this option would likely be as expensive as Option 1, given that the transferal of judges and staff would likely be difficult to coordinate between stakeholders and strongly resisted by courts of general jurisdiction. As with Option 1, the cost of renovation, refurbishment, or leasing of office space would be high, and there is insufficient evidence that separate court structures would significantly improve efficiency or quality of commercial case processing. The Study concludes that it is not feasible in FBiH at this time.

**156. Option 3 - Reorganizing and strengthening existing commercial case departments without establishing separate court structures - is the most feasible solution for FBiH.** Option 3 would require only minor amendments to procedural laws to enable the equal distribution and delegation of cases between Cantons and the accreditation of specialist commercial judges. Operationally, this option has the highest likelihood of improving the

efficiency and quality of work because it focuses on the substantive work involved in processing commercial cases and targets the key bottlenecks through better management, more systematic training, and incentives for performance. This option includes a comprehensive TNA and the delivery of specialized commercial training programs for judges and staff in commercial departments, leading to an elite accreditation as commercial specialists. Option 3 causes the least upheaval, and implementation could start immediately. Furthermore, all justice sector stakeholders consulted for this Study support this option, which suggests it requires the least amount of political capital and change management, and has a higher likelihood of being successful. Financially, the medium-term cost of this option would be manageable. Hiring additional judges and court staff, with a phased approach, would cost 1.6 million BAM in the first year, and approximately 3 to 4 million BAM each year thereafter. This option would require some additional investment in court infrastructure; however, infrastructure costs would be lower than under the other options. Ultimately, Option 3 is the easiest to implement and the most cost effective available.

## Recommendations and Next Steps

**157.** Implementation of Option 3 would require an integrated package of reform measures that are time bound. Actions would need to be implemented in their entirety to be fully effective.

### 1.13 Strengthen Commercial Departments in Municipal Courts in FBiH

**158.** Strengthening commercial departments would require undertaking a series of measures to ensure they have the capacity to resolve commercial cases in a timely manner and with high quality within the existing organizational model. This includes ensuring a sufficient number of dedicated and trained judges and legal associates, along with closer monitoring of backlog reduction plans and case law harmonization tools.

**159.** Over the next 18 months, the following steps should be taken, led by the HJPC in coordination with the courts and MOJs in FBiH:

- a. Strengthen the managerial role of Presidents of commercial departments. Stop the periodic rotations of judges in and out of those departments to enable departments to develop a cadre of commercial specialists. Revise, analyze and strengthen backlog reduction plans for commercial cases.
- b. Analyze unequal caseload distribution, review rules on the delegation of cases, and prepare amendments to procedural rules to enable swift delegation of cases between Cantons. Within courts, review the distribution of tasks and responsibilities between judges, legal associates, court bailiffs, and clerks/typists, ensuring that administrative and procedural work is effectively delegated to non-judge staff.
- c. Strengthen the role of the FBiH Supreme Court commercial department in issuing legal standpoints, and further refine the case law database.
- d. Review the existing allocation of judges to cases and offer incentives to judges to move to commercial departments. Appoint new judges for the remaining vacancies. Investigate the possibility of (temporary or permanent) relocation of judges to more burdened court locations.

### 1.14 Fast-Track the Resolution of Small Disputes

**160.** More could be done to fast-track the resolution of small claims in FBiH. A rudimentary system exists, but it does not operate well and processing times for small claims are longer than

for other cases. Several EU member states have adopted high-performing systems for the fast and fair resolution of small claims, lessons from these States should be applied to FBiH.

**161.** Over the next 18 months, the following steps should be taken, led by the HJPC but in coordination with the courts and MOJs in FBiH:

- a. Analyze bottlenecks in processing small claims cases;
- b. Identify lessons from EU member states in small claims processing (including possible study tours to Estonia, the U.K. and Denmark);
- c. Adopt a model to further fast-track small claims processing;
- d. Prepare amendments to procedural law;
- e. Roll out changes in procedure and practice and deliver training for providers; and
- f. Implement an information campaign and guide to raise awareness among small businesses of fast-track procedures.

### **1.15 Incentivize Performance**

**162.** There is a wealth of research on the role of incentives in public sector performance, including how institutions can boost performance by rewarding teams through non-financial awards and recognition. Applying these lessons, the judiciary in FBiH could do more to recognize and incentivize better performance of Municipal and Cantonal Courts. Awards programs vary but often require little or no legislative change and can be implemented consistently with ethical rules. Programs require reliable and objective data, which the HJPC has through the CMS, and only a small budget for prizes and dissemination costs. The World Bank team can share know-how and recent lessons from comparator countries.

**163.** Over the next 12 months, the following steps should be taken, led by the HJPC but in coordination with the courts and MOJs in FBiH:

- a. Analyze recent global innovations in incentivizing court performance;
- b. Design a rewards program that recognizes and incentivizes performance in Municipal and Cantonal Courts based on CMS data;
- c. Prepare and pass a decision of the HJPC to adopt the rewards program; and
- d. Launch the inaugural rewards program.

### **1.16 Develop and Deliver a High-Quality Training Program for Commercial Judges**

**164.** Comprehensive and high-quality training should be provided to judges and associates working in the commercial departments. First, a training needs analysis should be conducted using a problem-solving approach which analyses common issues of appeal and causes for case overturn, as well as reviews law and procedure and consults with judges, attorneys, businesses, bankruptcy trustees, and expert witnesses. Based on the training needs analysis, a curriculum and learning tools should be developed, adopted, and delivered. That training should then be compulsory for all judges and associates working in the commercial departments.

**165.** Over the next 18 months, the following steps should be taken, led by the CJPT in FBiH in coordination with the HJPC, courts and MOJs in FBiH:

- a. Conduct a training needs analysis for commercial departments;
- b. Develop curriculum and learning tools;
- c. Launch the inaugural training program;
- d. Prepare and pass amendments to procedural laws requiring that from 2018 judges in commercial departments must be accredited through training.

## 1.17 Close Procedural Loopholes and Ease Bottlenecks in Case Processing

**166.** As outlined above, delays and inconsistency in decision-making are exacerbated by a range of procedural inefficiencies that could be resolved through targeted reform.

**167.** Over the next 12 months, the following steps should be taken, led by the MOJ of FBiH in coordination with the HJPC and courts:

- a. Review the court fee schedule for commercial cases and propose revisions; develop a fee calculator that can help parties to estimate their likely costs;
- b. Review existing regulation for expert witnesses and bankruptcy trustees, including their methods of appointment, oversight and sanctions, and mechanisms to improve the efficiency and quality of their services. Identify reform opportunities, applying lessons from EU good practice;
- c. Consider models and policy options to improve the efficiency and quality of bailiff services;
- d. Review business processes and rules for the scheduling of court hearings, and identify opportunities to reduce the number of adjournments and impose procedural time limits;
- e. Prepare recommendations for amendments to procedural law and practice.

**168.** Policymakers in RS may also wish to consider adapting and implementing a subset of the reform measures proposed for FBiH above. In particular, reform in RS could focus on measures that improve case management, incentivize performance, strengthen training, close procedural loopholes and ease bottlenecks. The implementation of such reform measures could strengthen the performance of existing Commercial Courts in RS.

## Annex 1: Methodology

This study was conducted by the World Bank Global Governance Practice in consultation with justice sector stakeholders across BiH. The team conducted a desk review of existing qualitative and quantitative analyses on justice reform and the business climate in BiH, examined regional and international practices and lessons learned, and drew on empirical studies of court specialization. The team collected and analyzed quantitative data, including from case management systems in close collaboration with the HJPC and training data from the CJPT. Economic and demographic data was also collected and analyzed. Semi-structured interviews were conducted with approximately 60 stakeholders from the F BiH and RS. (A partial list of stakeholders consulted is at **Annex 2**.) In addition to interviews, the Bank, in collaboration with the American Chamber of Commerce in BiH, also conducted a small survey of businesses to gauge their views and experiences with commercial cases in F BiH courts. The survey comprised 16 questions and was completed by nine businesses.

The Study analyzed three scenarios:

- *Option 1:* Establish separate first-instance and second-instance commercial court in each Canton;
- *Option 2:* Establish separate first-instance courts in select Cantons and a second-instance commercial court at the level of F BiH;
- *Option 3:* Reorganize and strengthen existing commercial case departments without establishing separate structures.

The team analyzed the constitutional, legal, operational and financial implications of each scenario, as well as its associated opportunities and risks.

Stakeholders were consulted on the structure of the report, the development of the scenarios and the substance of the analysis. Stakeholders were invited to provide comments on an earlier draft of this report, and feedback was considered in finalizing this report.

## Annex 2: Partial List of Stakeholders

Caruso, Francesco	Sr. International Legal Expert	HJPC
Suljagić, Admir	Director of the Secretariat	HJPC
Pošković, Hajro	Deputy Director of the Secretariat	HJPC
Šabeta, Rusmir	Head of Judicial Department	HJPC
Balić, Damir	Head of Budget Department	HJPC
Čengić, Sana	Legal Advisor	HJPC
Bjelogrlić, Vera	Head of Department for Court Documentation	HJPC
Lučić, Radinka	Deputy Head of the Judicial Administration Department	HJPC
Nezirović, Goran	Judge & Member of HJPC	Supreme Court of BiH
Kalajdžić, Edita	Secretary to the Government	FBiH
Miraščić, Goran	Advisor to the Prime Minister	FBiH
Jahić, Mirsada	Vice Secretary, General Secretariat of the Government	FBiH
Jozić, Mato	Minister	Ministry of Justice of FBiH
Halilović, Hidajet	Assistant Minister	Ministry of Justice of FBiH
Udovčić, Mersiha	Expert Advisor	Ministry of Justice of FBiH
Softić, Aisa	Secretary to the Ministry	Ministry of Justice of FBiH
Marić, Branko	President	The Barr Association of FBiH
Murtezić, Arben	Director	Public Institution Centre for Judicial And Prosecutorial Training in FBiH
Trlin, Davor	Senior Professional Associate	Public Institution Centre for Judicial And Prosecutorial Training in FBiH
Kadrić, Zijad	Judge & Member of HJPC	Appellate Court of the Brcko District and member of HJPC
Nenadić, Mario	Minister	Ministry of Justice and Administration of the Canton of Sarajevo
Jahjaefendić, Jasmin	President	Cantonal Court of the Canton of Sarajevo
Jovanović, Janja	President	Municipal Court Sarajevo
Zaimović, Hakija	Head	Commercial Law Department of the Municipal Court Sarajevo
Jašarspahić, Mirsad	President	Chamber of Economy of FBiH
Pandurević, Mladen	Director	Association of Employers, FBiH
Kasipović, Anton	Minister	Ministry of Justice, RS
Turkeš, Drago	President	Higher Commercial Court in Banja Luka, RS
Koričić, Asmir	President	District Commercial Court in Banja Luka, RS

Pavlović, Vanja	Head of Department for Initial Training	Public Institution Centre for Judicial And Prosecutorial Training in RS
McNeill, Christine	First Secretary, Political	British Embassy Sarajevo
Šaljić, Damir	Economic Adviser	British Embassy Sarajevo
Thomas, Peter	Second Secretary, GGF Programme Manager	British Embassy Sarajevo
O'Shaughnessy, Jon	Second Secretary, CSSF Programme Manager	British Embassy Sarajevo
Buha, Dejan	Governance Project Manager	British Embassy Sarajevo
Tanović, Dalida	Justice Project Manager	British Embassy Sarajevo
Jašarević, Amra	Regional Advisor on Judicial Reform	UNDP / Norwegian Courts Administration
Obrenović-Sahurić, Lara	Rule of Law Policy Advisor	Embassy of the Kingdom of the Netherlands
Kelly, Una	Senior Program Manager	Delegation of EU to BiH
Berthoud, Julien	Rule of Law Adviser	Delegation of EU to BiH
Wood, Richard	Head of Rule of Law	Delegation of EU to BiH
Al-Khatib, Umerr	Rule of Law Adviser	Delegation of EU to BiH
Šakota, Alma	Legal Advisor on Economic Public and Private Law	Delegation of EU to BiH
Stanojević, Sanja	Political Advisor	Delegation of EU to BiH
Potparic-Lipa, Biljana	Justice Project in BiH Director	USAID
Sušić, Muhamed	Justice Project in BiH, Deputy Director	USAID
Miovčić, Sanja	Executive Director	Foreign Investors Council
Kajan, Tea	Legal Affairs	Foreign Investors Council
Čibukčić, Violeta	Executive Director	AmCham
Milanović-Lalić, Mirna	President	AmCham
Karić, Nadža	Communications Officer	AmCham
Dizdar, Slaven	Attorney At Law	Maric & Co
Smailagić-Hromić Džana	Attorney At Law	Maric & Co
Radovanović, Predrag	Partner	Maric & Co
Bošnjak-London, Bojana	Attorney At Law	Maric & Co
Mehmedović, Armela	Associate	Maric & Co
<b>World Bank Team</b>		
Proskuryakova, Tatjana	Country Manager, BiH	World Bank
Harley, Georgia	Justice Reform Specialist	World Bank
Svirčev, Srđan	Public Sector Specialist	World Bank
Krnić, Ana	Justice Reform Adviser	World Bank
Matić Bošković, Marina	Justice Reform Adviser	World Bank





